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PARLIAMENTARY ELECTIONS.

A HISTORY

SHOWING

HOW PARLIAMENTS WERE CONSTITUTED

AND

REPRESENTATIVES OF THE PEOPLE ELECTED

IN

ANTIENT TIMES.

BY

HOMERSHAM COX, M.A.

BARRISTER-AT-LAW;

AUTHOR OF 'THE INSTITUTIONS OF THE ENGLISH GOVERNMENT'

ETC.

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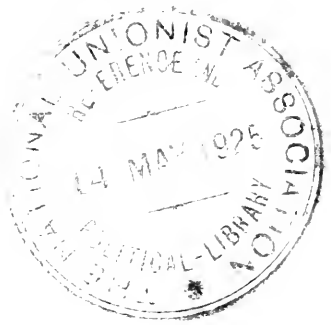
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PREFACE.

A FEW YEARS AGO the compilation of a satisfactory history of Antient Parliamentary Elections would have been almost impracticable. Some of the most important documents relating to the subject were but little known, and others entirely unknown. For example, when the elaborate 'Report on the Dignity of a Peer' was published in 1820, the writers, though they were officially assisted by the keepers of the Public Records, and could command the services of the whole of that department, were not acquainted with the returns for the very first regularly constituted and complete House of Commons ever convened in this country—that which sat in the twenty-third year of the reign of Edward I. Those returns have since been published in the magnificent collection of Parliamentary Writs, edited by Sir Francis Palgrave. The publication of that, and of the other great works issued by the Record Commission, marks a new era in the study of Constitutional History. But the very magnitude and number of the volumes, and the obscurity of the language in which they are written, render them inaccessible to all but the most diligent and determined inquirers. In another branch of the subject discussed in the following pages—the Saxon polity—most important additions to our means of knowledge have been made within the last few years. In order to investigate accurately the original suffrage, either in counties or

boroughs, a knowledge of English political institutions before the Conquest is requisite. It was not until 1840 that the 'Antient Laws and Institutes of England' during the Anglo-Saxon period were made fully accessible by the publication of a collection of those laws, edited by Mr. Thorpe, under the direction of the Commissioners of Records. Another work, from which I have derived even more important assistance, is the 'Codex Diplomaticus Aevi Saxonici,' edited by Mr. Kemble, and published in six volumes, between the years 1840 and 1848, by the Historical Society. The series comprises upwards of fourteen hundred documents, many of which are of the greatest value in ascertaining the nature of Saxon Government. Also, from several of the books lately issued under the direction of the Master of the Rolls—particularly the series of 'Chronicles and Memorials of Great Britain and Ireland'—I have frequently derived valuable information.

But, besides these recent publications, others, long known to inquirers into the antiquities of the English Constitution, have been consulted. The 'Hundred Rolls' of the reign of Edward I. and his predecessor have been published more than half a century in two very large and closely-printed folio volumes; but the very obscure contracted Latin in which they are written, and the technical expressions with which they abound, render them unintelligible to all but a very few readers. Yet they are a vast mine of constitutional knowledge, and in some respects more interesting than even the Domesday Book itself. The works of that prodigy of learning—Prynne, especially his 'Brief Register' of Parliamentary Writs; the 'Firma Burgi,' and 'History of the Exchequer,' by Madox; and Spelman's 'Glossarium,' will of course be consulted by anyone who wishes to obtain authentic materials for a history of the suffrage. Going still further back, it is obvious that in writing such a work it is necessary to refer to the earliest jurists—Glanville, Britton, Bracton, and Fleta. Copious use of

these authorities has been made ; and though, of course, anything founded upon them cannot be considered as absolutely new, much of the information here collected from them will probably appear novel to many of my readers.

The earliest chapters of this work are necessarily of a preliminary character, and may seem superfluous to a reader anxious to plunge *in medias res*. I am certain, however, that in the study of the subject here discussed, a preparatory consideration of the state of society to which our parliamentary institutions adapted themselves, is indispensable. In the first place, therefore, the social and legal status of the various agricultural classes in the Middle Ages has been investigated. The close connection of this subject with the county suffrage will be immediately obvious. The third and fourth chapters treat of that much-controverted subject—the constitution of the antient County Courts. The condition of the persons who frequented those assemblies has long been a vexed problem of history ; and I do firmly believe that it is now for the first time solved—principally by a most fatiguing and protracted exploration of the 'Hundred Rolls.'

The fifth chapter relates to the origin of Parliament, and the development of the representative system in the thirteenth and fourteenth centuries. In this chapter are collected numerous authorities, which appear decisive of the much-controverted question whether villans, the most numerous class of county tenantry, were contributory to parliamentary taxes and the wages of knights of the shire. That they were so contributory, and that they had a right of suffrage, seems to me now absolutely beyond doubt. In the next chapter the changes in the county suffrage, in the reigns of Henry IV. and Henry VI., are traced; and I have endeavoured to show the real reasons for the violent innovations of the latter reign, and the disastrous consequences which ensued. The extinction of antient electoral rights in the time of Henry VI. marked and hastened the

decline of the power of Parliament which commenced in that reign, and continued until it reached its lowest point in the reign of Henry VIII.

The remaining chapters deal with the method of procedure at elections, and the borough suffrage. The original suffrage of burgesses extended to all the free inhabitant-householders in towns, and all boroughs without exception were, at the original institution of the House of Commons, deemed entitled to send representatives to that assembly. The counter-theory—that only towns of royal demesne, and therefore under royal patronage, sent representatives—was supported by Dr. Brady and the 'Report on the Dignity of a Peer;' but, as I have here shown, the evidence of the returns to the first complete Parliament of Edward I. and other antient documents is absolutely fatal to this opinion.

The liberal arrangements adopted in the Record Office permit free access to that great storehouse of historical knowledge. I was anxious to ascertain from documents somewhat later than the 'Hundred Rolls,' the condition of villans and other tenants after the reign of Edward I. For this purpose a large number of Chartularies and Extents deposited in the Record Office have been searched. I am under the greatest obligations to my friend Mr. Frank Scott Haydon, of that department, who, on my behalf, applied his learning and skill to the examination of these manuscripts—an investigation for which his familiarity with the history of the Middle Ages, and his skill in palæography, rendered him peculiarly well fitted. I am also indebted to the Rev. James Thorold Rogers, Professor of Political Economy at Oxford, for several valuable suggestions, and for some able notes respecting the value of property in the Middle Ages. The research displayed in his elaborate 'History of Agriculture and Prices,' enable and entitle him to speak with the highest authority on questions of mediæval economy.

The numerous translations, from Latin and Norman-

French, which occur in the following pages are often very uncouth. It is desirable to explain that literal accuracy has been deliberately preferred to a treacherous smoothness of composition.

I cannot hope that this work is free from errors, but can truthfully plead, in extenuation, that it is the result of careful research and deliberation.

The subject has been regarded entirely in its historical aspects, apart from all reference to existing controversies. The social and political condition of the country at the period here under examination, differed materially from that which at present prevails, and therefore extreme caution is necessary in deducing from the antient history of Parliament lessons of modern application. At the first institution of the House of Commons, land was cultivated principally by peasant proprietors, members of Parliament were paid wages, their functions were principally fiscal, the parliamentary franchise was a burden rather than a privilege, the polling of voters and a property qualification for the suffrage were unknown, and the relations of the Administrative Government to Parliament were utterly different from those established under the Hanoverian Dynasty. These considerations are sufficient to show that a Constitution which worked well in the fourteenth century would not necessarily be beneficial in the nineteenth.

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APPENDIX.

ANTIENT

PARLIAMENTARY ELECTIONS.

CHAPTER I.

THE RURAL POPULATION OF THE MIDDLE AGES.

Mediæval Tenancies, 1.—*Freeholders, Villans*, 2.—*Cottagers*, 3.—*Officers and Government of a Manor*, 4.—*Jurisdiction of Manorial Courts*, 4.—*Freeholders' rents and services*, 5.—*The time when villan-tenures became hereditary*, 6.

In the Middle Ages, land was held upon a system very different from that which at present prevails. In modern times, farmers are for the most part tenants from year to year, or in some districts for fixed terms of years. In the thirteenth and fourteenth centuries, such tenancies were almost unknown.* The majority of the cultivators of the soil were *peasant proprietors*. Either as freeholders or as customary tenants they had permanent interests in their holdings, though apparently it was not until some time after the reign of Edward I. that those interests became generally transmissible from father to son by inheritance.

It is necessary to recognise the social condition then prevailing in order to comprehend the early history of our representative institutions; for those institutions were obviously framed with reference to the circumstances of the people who were to have the benefit of them.

In the reign of Edward I., when representative government became regularly established, the general character of the rural population was as follows. The country was for the most part

* Leases for years were recognised by law; for Fleta and Bracton, who wrote in the reign of Ed. I., expressly mentioned them. But in the course of a minute examination of the Hundred Rolls, which are coeval, I have found hardly one instance of a lease for a term of years.—Fleta, lib. 4, c. 31; Bracton, lib. 4, c. 36.

divided into manors, the *lords* or owners of which constituted the country gentry. The lord of a manor of ordinary dimensions occupied the social position of a modern squire. He usually retained in his own hands a considerable part of his estate, which was cultivated by his bailiff. The remainder was occupied by three classes of persons: (1) *Liberè tenentes*, freeholders who had small holdings for which they paid fixed rents; (2) *villans* (*villani*), or customary tenants, whose rent was paid partly in labour and partly in money or farm produce; (3) *coterelli* or *bordarii*—cottagers.

1. Freeholders. A modern freeholder in England does not usually pay any rent for his land; he buys it out and out for a single sum of purchase-money. This, however, was not the practice in the reign of Edward I. Then the free tenant paid a rent which was considerable with reference to the profits of his holding. The distinguishing character of his tenure was *its hereditary quality*. Fleta, who wrote in this reign, insists upon this as the distinction between freehold land and that held in villenage. 'If a villan,' he says, 'be infeoffed of his lord, under whose power he was, to hold freely—*no mention being made of heirs*—although he be ejected by the feoffor himself, he shall not recover by assize.'* The free tenant was simply the man who held his land *to him and his heirs*. Besides this, a law of Edward I., called, from its first words, *Quia Emptores*, rendered land of this tenure freely disposable at the will of the owner. This enactment, from its important consequences, is a landmark in our political history. According to the feudal theory which prevailed in the time of William the Conqueror, all land in the hands of subjects was supposed to be held of some superior lord, either of the king directly—whose tenants were said to hold in *capite* or in chief—or of some intermediate or *mesne* lord. The strict feudal rule was, that the tenant could not alienate his land without the licence of his feudal superior; but this rule was evaded, and at last was abrogated by the law of Edward I.

2. Villans—*Villani*. The word *villanus* (derived by Coke† from *villa*, which is another word for a manor or lordship,‡) denotes a person attached to the vill—*adscriptus villæ*. These tenants were originally of servile condition, and had land granted to them by their lords under an obligation of per-

* Fleta, lib. 4, c. 11.

† First Institute, 116a. This derivation suggests that villanus should be rendered in English by 'villan,' not 'villein.'

‡ Ellis: Introduction to 'Domesday,' vol. i. p. 240.

forming agricultural services.* At first their tenure was very precarious, and they had no better title than the *custom* or usage of the manor. But this *custom* became gradually recognised by law. The villan, or customary tenant, in the reign of Edward I., had acquired a permanent legal interest in his land, and the lord could not eject him so long as he performed the services proper to his holding.†

3. COTTAGERS—*Cotarii, coterelli*, or *bordarii*—occupied ordinarily the lowest rank among the tenants. These Latin appellatives, for our present purpose, may be regarded as almost synonymous; for the terminology of the Middle Ages was by no means exact. Bishop Kennett, however, in his 'Parochial Antiquities,' distinguishes between *cotarii* and *coterelli*, and considers that the former had a free socage tenure, and paid a firm or rent, in provisions or money, with some customary services; whereas the latter held in absolute villenage, and their persons and goods were disposable at the pleasure of the lord.‡ *Bordarii* are frequently mentioned in 'Domesday,' and

* It must not be assumed that this practice originated after the Conquest. The Saxon charters record numerous instances of *læn land*, or loan land, let upon the condition that the occupiers should perform various services, and render specified amounts of produce to the owners. (See 'Kemble's Saxons in England,' b. 1, c. 11.) The remarkable document called 'Rectitudines Singularum Personarum,' of which a Saxon version exists in the library of Corpus Christi College, Cambridge, enumerates the services exacted from different classes of tenants. Of the geneat—in the ancient Latin version called 'Villanus'—it is said, 'The geneat right is various, according to the custom of the land. In some places he must pay land rent and a grass service annually, ride and carry, work and feed his lord, reap and mow,' &c. The obligations of the cotsetla, or cottager, and of the gebur—another class of tenants—are similarly described.

In the 'Codex Diplomaticus Ævi Saxonici'—a most valuable collection of Saxon documents, edited by Mr. Kemble, and published by the Historical Society—there is given a grant of certain lands at Hurstbourne, in the days of Ælfred, or of Edward the Elder; the services of the ceorls, or dependent freemen, are enumerated; among other things, they are to plow three acres, and sow them with their own seed, to house the produce, to pay three pounds of rent-barley, to mow half an acre of rent-meadow, and stack the produce, &c.—Cod. Dip., No. 1077: Diplomatarium, p. 143.

† Britton, who wrote in the reign of Ed. I., says of the tenants—'Et ceux sont priviledges en tiel maner que nul de les doit ouster de tiels tenements tant come ilz font les service que a lour tenements appendent.'—Fol. 165.

‡ In the 'Rectitudines Singularum Personarum,' mentioned in a previous note, the services of the cotsetla in Saxon times are enumerated. It is distinctly stated that he is not to pay money-rent, and that he is a *free man*. 'The cot-settler's right varies according to custom. In some places he must work for the lord every Monday throughout the year, or three days every week in harvest. He need pay no land-rent (gafol). He ought to have five acres; more, if it be the custom. And if it be less it is all too little, for his service is

are evidently the same as *cotarii*.* Spelman derives the word *bordarius* from the Saxon Boɒ, a *house*, because the persons so called performed domestic service for the lord, such as grinding corn, drawing water, and the like.†

Fleta, who wrote in the reign of Edward I., gives a curious and interesting picture of the government and economy of a manor in his time. The chief officer, he says, is the steward, or seneschal (*senescallus*), whose duty it is to hold the courts of the manor. If he do so by substitute, yet he ought personally to attend the court at least two or three times a year, and inquire respecting rents and services withheld, alienations of land, and the like. He ought to keep account of the number of acres of arable, of cattle, &c.; to inquire into the conduct of the bailiff and inferior officers towards the tenants, whether they engage in brawls or frequent taverns, neglecting their duty. It was also his office to take account, personally or by deputy, of meat and other provisions delivered for the use of the lord's household. The *bailiff* of the manor had duties more strictly agricultural. He overlooked the reapers, mowers, and other labourers, and directed the time and order of agricultural operations. The *prepositus*, or foreman, was one of the most skilful of the labourers, elected by the people of the vill, and presented to the lord or his steward. The prepositus accompanied the other labourers in their work, fed and littered the cattle, and gave an account of their fodder, of the seed used for sowing, and other outgoings of the estate.‡

Thus the manor of the Middle Ages formed a distinct society or community by itself. The principal secular edifice was the manor-house. In the manorial hall the lord or the steward received the homage of the tenants, and held periodically the manorial court. The jurisdiction of this court related most frequently to petty misdemeanours and trespasses within the manor, and to questions respecting the property of the tenants. Many of the manorial courts had, however, a far more important authority, and, by prescription or charter, claimed cognisance of the most serious crimes. The 'Hundred Rolls,' to which frequent reference will be made in the following pages, show that the

often called upon. He must pay his hearth penny on Holy Thursday, as it behoves every freeman to do,' &c. This document is given in the 'Antient Laws and Institutes of England,' which will be frequently cited in the following pages.

* Ellis: Introduction to 'Domesday,' vol. i. p. 83.

† Spelman: Glossary—In vocibus Cotarius, Bordarius.

‡ Fleta, lib. 2, cc. 72-76.

lords of manors in very many places exercised the right of gallows. A record of a trial for felony in the Holywell Manor Court, Oxford, proves that this right was exercised so late as the reign of Edward III. The document states the particulars of a robbery committed in the suburbs of Oxford, within the liberty or franchise of Holywell; that the prisoner was found guilty and sentenced to be hung. The significant marginal note 'Susp.' shows that the sentence was executed.*

Freeholders in the Middle Ages were not only liable for annual payments, often considerable, with reference to the value of their holdings; they were also often bound to render other services not materially different from those of villans. The 'Hundred Rolls' of the reign of Edward I. often make mention of labour performed by free tenants in virtue of their tenure; though more frequently those Rolls show that their rent was paid in money or farm produce.† In later records, also, there are repeated instances of free tenants who paid for their land by their labour. For instance, in the Cartulary of Battle Abbey,‡ now in the Record Office, it appears, by an extent taken in 5 Ed. II., that in the manor of Lymenesfield there were 56 *liberè tenentes*, each of whom, besides money, contributed, as part of his rent, a certain amount of labour in ploughing. And this is by no means a singular or unusual instance.

The social position of villans differed widely in different places. In the next chapter it will be shown that at the time of the Conquest, and afterwards, villenage did not necessarily, or even generally, imply serfdom. The freeman who held in villenage had acquired, certainly in the reign of Edward I., a fixed tenure of his land, and was often the social equal of the freeholder. In other cases the villan occupied a much lower

* Prof. Rogers' 'History of Agriculture,' vol. ii. p. 666.

† For example, in the Hamlet of 'Tvytroph,' Oxfordshire (2 'Hund. Rolls,' p. 785), it is said of a free tenant, that 'he holds three virgates of land for doing suit at the court of his lord and the Hundred of Leuek,' 'and he ought to reap in autumn for one day with all his household, at the usual day (bederipp) of the lord, except his wife nursing and his shepherd.' The bederipp was one of the customary days in the year when tenants were bound to work for the lord. These days are said by Spelman to be called bind-days, or bidden days—dies precariæ.—Glossarium, In voce 'Precaria.'

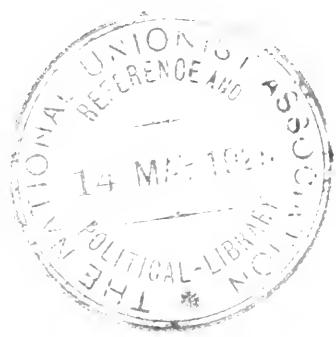
The Bederipp is very frequently mentioned in the 'Hundred Rolls,' in the enumeration of customary services in the reign of Ed. I. But the same custom prevailed in Saxon times. Bishop Denewulf gave Ælfred forty hides, at Alresford, loaded with various conditions: among them, that his men should be ready 'ge to ripe, ge to huntnothe,'—that is, at the bishop's harvest and hunting.—Kemble, 'Saxons in England,' vol. ii. p. 84, *note*.

‡ Cartulary of Battle Abbey, vol. i.

grade, and more dependent on his landlord; and though not legally a serf, was subject to obligations which were the relics of former bondage. The following may be taken as a specimen of services of villans of the more servile condition in the reign of Edward I.:—At Eltesle, in Cambridgeshire, 'Henry Godknave is the customary tenant of the same Philip, and holds of him one messuage and sixteen acres of land, and owes, therefor, from Michaelmas to the calends of August every fortnight three days' work whenever required; and from the calends of August to Michaelmas next following, every week three days' work, namely, Monday, Wednesday, and Friday, unless feast days prevent. And he owes his lord four hens and at Easter twenty eggs; and he cannot marry his daughter without the licence of his lord. Et si sit fornicata per quod habeat puerum dabit domino suo pro illa fornicatione quinque solidos. And if the said Henry die, his wife shall continue on the land and do all that pertains to that land so long as she chooses to remain a widow, and shall give to the lord one ploughshare or ninepence.'—'Hundred Rolls,' vol. ii. p. 506. The entry states that there are nine other tenants on this estate subject to the same services.

It is uncertain when villan tenements became hereditary. Littleton, writing in the reign of Edward IV., speaks thus of copyholders, of whom the villans were the prototypes:—'Although some tenants have an inheritance according to the custom of the manor, yet they have but an estate at the will of the lord according to the course of the common law.' He adds, that 'the lord cannot break the custom which is reasonable in these cases.' Thus Littleton speaks of the inheritance of villans as a matter of custom, not universal and not according to the course of common law, though the custom had in his day acquired the force of law. A passage from Fleta, cited in a preceding page, shows that in the reign of Edward I. copyhold or villan tenements were not hereditary. The extract just made from the 'Hundred Rolls' is to the like effect. It shows that according to the custom of a particular manor, on the death of a villan tenant, his wife was entitled to hold his land during her widowhood. Consequently, during that period his heir could not occupy it. This shows conclusively that the heir of a villan on the estate in question was not then deemed entitled to his land. But it also shows that the villans themselves had a fixity of tenure, for if the widow of a tenant had a vested interest in his holding it is not to be supposed that he himself

could be dispossessed capriciously. The question of the social and legal position of this numerous class of persons is very material in determining the antient character of the county suffrage. In the next chapter the subject will be pursued for the purpose of investigating the place which the tenants in villenage occupied in the political system of the Middle Ages.



CHAPTER II.

SOCIAL ORDER IN THE MIDDLE AGES.

Division of the people into the bond and free, 8.—*Saxon Frankpledge,* 9.—*Admission of youths to the Decenna,* 10.—*Saxon institutions maintained after the Conquest,* 10.—*Domesday,* 12.—*Census of different classes,* 13.—*Free villans,* 14.—*Emancipation of serfs,* 17.—*Relative numbers of bond and free,* 19.

THE principal characteristic of the social polity of the Middle Ages was the division of the people into two great classes—the *bond* and the *free*. This distinction affected the whole of England. Accordingly as a man belonged to the one class or the other his legal status was determined; and the entire system of law and government depended upon this classification.

William the Conqueror found this social distinction firmly established in England and he did not attempt to disturb it; on the contrary, one of the most notable acts of his reign was the collection and confirmation of the Saxon laws with some comparatively small modifications. The distinction between the bond and free continued until long after his time. When the parliamentary suffrage was established, it plainly had relation to the twofold division of the people. Hence it becomes necessary to advert for the purpose of this work to Saxon political institutions; for without some reference to them it is impossible to comprehend the first development of the system of parliamentary elections.

The cardinal rule of government, at least during the latter part of the Saxon era, was that persons of free condition were responsible for each other before the law, but that those of the servile class were under lords who were responsible for them. The free found pledges, each among his fellows, to produce him before the courts wherever justice required that he should be forthcoming. The lord was similarly answerable for his servile dependents. This system was utterly different from anything which now exists; the only analogy to it would be to suppose every subject in the realm perpetually bound over with sureties to keep the peace.

We have now a very carefully edited collection of the Saxon laws* published by the Record Commission, under whose

* 'Antient Laws and Institutes of England.' Folio. 1840.

auspices most important contributions have been made to the knowledge of English history and constitutional law. Some few references to these authentic materials will serve to explain the principal features of the Saxon system.

The learned editor of the collection of Antient Laws does not adopt the view that the decemary system was completely established during the Saxon era. In his Glossary he states that Frithborg, or Frankpledge, was the system 'by which all free persons whose rank and property were not in themselves adequate security for good behaviour, were associated in tithings, whose members were mutual security, or "borh," for each other. The chief of these associations was the tithing-man. This institution, which in its perfected form dates probably from the Conquest (though traces of it exist in "Edgar's Laws," ii. 6, s. 3, where it is directed that every man shall have a "borh"), must not be confounded with the older one of Saxon times, by which every hlaford [master] was bound to have his men in his borh, or under his guarantee.'*

Notwithstanding the high authority of the writer just quoted, it may be doubted whether the statement that Frithborg 'in its perfected form dates probably from the Conquest,' gives an adequate impression of the prevalence of this system at an earlier period. The very name, essentially Saxon, indicates its origin. Moreover, in the Saxon laws we find clear and distinct regulations respecting this institution; and in the laws which William the Conqueror promulgated, he distinctly adopts the ancient usages of the country.

The laws of Edgar provide (ii. 6) that every man shall leave his borh or pledge, who is to have him forthcoming to do right; and if he do not, 'let the borh bear that which he ought to bear.' If any man had been often accused and was found unfaithful to the people, and did not attend the gemote or general assemblies, those of the gemote were to go to him and he should find a pledge if he could: if he could not, he was to be seized alive or dead, and all that he had was to be forfeited to pay his accuser the just ransom of his crime; and the lord should have half his land and the Hundred the rest (ii. 7).

Similarly, the laws of Ethelred, who succeeded to the throne A.D. 978, direct that every free man shall have his borh, and 'that the borh may present him to every justice if he should be accused. And every lord is to have his hired household in his own pledge, and is to be responsible for them' (i. 1). Here a distinction is clearly made between the mutual pledge of free-

* Antient Laws: Glossary, Sub voce Fridborg.

men, or frankpledge, and the responsibility of a master for his servants.

It is material to observe that in these and other Saxon laws the condition of freedom is not connected with the tenure of land. The persons who are to give pledges are free *men*—not free *tenants*, or free *holders*. Various ways existed in which persons of servile condition could be emancipated, and as those persons did not necessarily possess land, it is clear that many free men were not freeholders.

The laws of Cnut, who became king A.D. 1017, describe with much particularity the system of mutual pledges. By sect. 20, every freeman who wishes to be 'law-worthy' shall place himself in the Hundred and Decenna after he is twelve years of age, 'otherwise let him not afterwards be entitled to any free rights, whether he be the head of a family (heorth-fæst), or a follower. And every one shall come to the Hundred Court and be put in pledge; and his pledge shall keep him forthcoming to every plea.' A subsequent section declares that every lord shall have his servant in pledge.

The meaning of these provisions seems to be, that all freemen were to be brought to the Hundred Court and put in pledge, whether they were heorth-fæst—that is, householders with hearths of their own—or 'followers,' which phrase probably denotes free persons in the service of a master and living under his roof; on the other hand, for servants who were not free the masters themselves were to be sureties.

These references seem sufficient to prove that the Frankpledge was a fundamental institution of Saxon England. Every free youth, when he reached the age of legal responsibility, was subject to it. By a solemnity of the Hundred Court he was formally enrolled in the number of English free men. The ceremonial was an important epoch of his life; it marked the transition from pupilage to the privileges and obligations of citizenship.

The compilation of laws which bear the name of Edward the Confessor gives much additional information on this subject. William the Conqueror, in the fourth year of his reign, instituted an inquiry into the laws of England as they existed in the time of Edward the Confessor. This circumstance is material to our investigation, because it shows that the political institutions of England after the Conquest were fundamentally based upon those which existed in Saxon times. It was the policy of the Conqueror to manifest great deference to the laws of the Confessor and respect for his memory. This is shown

incidentally in the Domesday Book, which was compiled under William's authority. In that great record, Harold is frequently mentioned in terms of contumely as a tyrant and an invader; while Edward—*gloriosus rex Edwardus*—is regarded with the utmost respect.* William directed an inquisition, by twelve persons elected from every county, into the Saxon laws; and the compilation so framed has been always called the Laws of Edward the Confessor. There can be no doubt that they describe the customs which prevailed in his time, with some later modifications.† Those laws declare that everybody in every vill of the whole kingdom ought to be under *pledge* of the decenna, or ten men; so that if any of the ten should incur a forfeiture, the nine should produce him to do right; but if he should fly, 31 days should be allowed him by law, and being sought and in the meanwhile found, he should be made amenable to the justice of the king. The subordination of jurisdictions is defined. Minor disputes were to be settled in the decenna, more considerable questions in the Hundred, and causes which could not be dealt with in the inferior jurisdictions were to be determined in the shire.

There are to be two great folc-motes, or meetings, in the course of the year. It is important for our future purpose to note who are to attend them. All the people who are under the protection or in the peace of the king are to come once in the year, in the kalends of May. There is to be another folc-mote every year in the kalends of October, when the sheriffs and head-boroughs are to be elected. The shire-mote is to be held twice a year; that of the Hundred twelve times, being summoned seven days before.

Throughout these laws, the great distinction between bond and free is uniformly observed. The persons who are to be in pledge are all free men—*omnes liberi homines.*

The laws of William the Conqueror are another collection of his reign. They have a preamble to the following effect:—'These are laws and customs which King William, after the

* A MS. quoted in the Preface to the 'Antient Laws and Institutes of England,' p. 5, states that in the fourth year of his reign William summoned, from all the counties of England, a number of persons learned in their laws, in order that he might be informed of the laws and customs; that though he had previously enjoined in the whole kingdom laws of Danish origin, because his ancestors and those of his Norman followers came from Norway, yet, at the instance of the English people, he determined to revive the laws of the Confessor. By the command of King William, twelve of the wisest men of every county were elected, who were commissioned to compile the laws which bear the name of the Confessor.

† Compare Ellis's Introduction to 'Domesday,' vol. i. p. 303 and p. 311.

acquisition of England, granted to all the people of England to be observed—namely, those which his predecessor and kinsman King Edward kept in his kingdom of the English.'

These laws, among other things, elucidate the relations between lords and their villans. By sect. 29 it is provided that the lord shall have for the relief of his villan the best of his cattle, whether it were a horse, an ox, or a cow, but that afterwards the villan shall be in Frankpledge.* This probably means that if the lord chose to accept a relief or contribution from his villan, he recognised him as capable of possessing property—a power which was inconsistent with absolute servitude. Consequently, after such acceptance the villan was to be in frankpledge: that is, he was to come under that system of mutual pledges which was the characteristic of freemen.

There are other ways provided by which villans might acquire freedom. 'If any one wishes to make his serf free, let him deliver him to the sheriff by the right hand, in full county court, and declare him free from the yoke of his servitude by manumission, and let him show him free ways and gates, and deliver to him free arms—namely, a lance and a sword—and then he is made a free man.'† The next section provides that if 'a bondsman remain without claim for a year and a day in our cities or in walled boroughs, or in our *castra*, from that day they are made free, and shall be free from the yoke of bondage for ever.'

These references are sufficient for the present purpose of showing the general character of the laws relating to the states of different classes of the people. It is desirable to see, further, the practical effect of those laws, and the relative numbers of the classes to which they related. So far as the reign of William the Conqueror is concerned, we have tolerably complete information on this point from the Domesday Book. This great survey of England was completed in the year 1086. It was made under the superintendence of certain commissioners, called the king's justiciaries. The sheriffs, the lords of each manor, the presbyters of every church, the reves of every hundred, the bailiffs and six villans of every village, were appointed jurors to inquire into the name of each place, who held it in the time of Edward the Confessor, who was the present possessor, the extent of each manor, how much was in

* De villani relevio; melius animal quod habuerit id (sive Equus sit, sive Bos, sive Vacca) donabit Domino suo pro relevio et postea sint omnes villani in franco plegio.

† iii. sec. 15, 'Antient Laws,' p. 213.

demesne, how many homagers there were, how many villans, how many cotarii, how many servi, how many free men, how many tenants in socage, and various particulars as to the quality and value of the land. The method generally followed in each return was, first, to entitle the estate to the owners, the hundred was next specified, then the tenant with the place, and afterwards the description of the property. The survey is nearly complete, except that the counties of Northumberland, Cumberland, Westmoreland, and Durham are omitted.*

It will be apparent from this account that Domesday affords an invaluable means of understanding the distribution of the population of England in the latter part of the eleventh century. It may be added that, for the purpose of researches respecting our political institutions, the use of this record is greatly facilitated by the elaborate introduction compiled by Sir Henry Ellis, and published in 1833. This valuable work contains an abstract of the population, which has been computed by counting the number of persons of each class enumerated in each county; and the learned compiler expresses the opinion that, so far as the agricultural population is concerned, the account may be considered accurate. The total number of persons recorded in the abstract is 283,242; which, if we adopt the common supposition that each family consists of five persons, would make the total recorded population 1,416,210. Lest this number should appear extravagantly small, it may be remarked that a very high authority reckons the population of England and Wales approximately at one million and a half in the fourteenth century.†

From the abstract of total population appended to the Introduction to 'Domesday,' the following figures have been selected:—

Tenants in capite		1,400
Under tenants (mesne lords)		7,871
Bordarii	82,119	
Coscets	1,749	88,922
Cotarii	5,054	
Liberi Homines		10,097
Liberi Homines commendati		2,041
Servi		25,156
Sochemanni		23,072
Villani		108,407
	Total	266,966

* Ellis's Introduction to 'Domesday.'

† Rogers' 'History of Prices and Agriculture,' vol. i. p. 57.

This will give a fair idea of the relative numbers of the more numerous classes of the population. The abstract from which these figures are copied contains a great many more entries, which are here neglected for the sake of simplicity. In the foregoing extract I have omitted all the small classes of which the numbers are below 1,400, and have given all the rest, except burgenses, who do not belong to the present inquiry respecting rural population. Most of the omitted numbers are very small; some of them are only units, and probably many of them appear in stead of more exact appellations. For example, there are among the entries classes vaguely called paupers, homines, and rustics.

In the foregoing synopsis, by far the largest class mentioned is the *villani*. It is to be considered, however, that this term included persons of very different conditions. It is quite certain that the villans were not *all* in a state of servitude; for in several places *liberi villani* are mentioned.* There does not appear to be in Domesday anything which would justify the conclusion that the villani were universally in bondage; but, on the contrary, there is much in that and other mediæval records which leads to the inference that a very large portion of them were free. Sir Henry Ellis, in the learned work to which frequent reference has been made, says there are 'numerous entries in the Domesday survey which indicate the villani of that period to have been very different from bondsmen.' He notices instances in which villans are said to pay reliefs. According to the law mentioned in a former page, the villan, upon such payment, would become free and be liable to be put in frankpledge. Sir Henry Ellis refers to the circumstance that the jurors who made up the returns for Domesday included six villans for every manor — pretty good proof that they were not slaves. He also refers to different denominations of villans—villani integri, villani dimidii, and others—which show that those persons were not all on the same social level. There is a remarkable entry in the second page of the second volume of Domesday, under Benflet, which shows that a man might be free as to his personal capacity, and be reckoned a villanus with reference to his tenure. The entry states that in this manor there was formerly a certain freeman who has since become one of the villans;† that is, as Sir Henry Ellis construes the entry, he was a yeoman and became a tenant.

* In the Abstract for Norfolk, 73, 'Liberi villani' enumerated.—Introduction to 'Domesday,' vol. ii. p. 470.

† In hoc manerio erat tunc temporis quidam liber homo de dimidiâ hidâ qui modo effectus est unus de villanis.

Besides, we have throughout Domesday multitudes of entries in which villani, servi, and cotarii are obviously distinguished from one another. Respecting the same manor, we frequently find an entry first of the villani, then of servi, then of cotarii. It is impossible to suppose that if servi and villani were the same, this double enumeration would have been adopted in a number of instances too large to be regarded as accidental.

There are many other evidences that freedom was in the Middle Ages a personal right independent of the tenure. Many of these evidences are of a later date than Domesday; but it will be desirable to refer to them here in order to avoid the inconvenience of reverting to the subject hereafter. In the 'Hundred Rolls,' or 'Rotuli Hundredorum,' which were compiled in the later part of the reign of Henry III. and the early part of the reign of Edward I., and contain a survey of manors in various counties, we find the classification of liberè tenentes, villani, and servi, commonly observed with respect to individual manors; the villani are entered in a list separate from servi.

The authority of Bracton, who wrote in the reign of Edward I., is express to the effect that freedom did not depend on tenure. For example, he says in one place that 'the tenement does not change the state of the freeman any more than of the slave; for a freeman can hold pure villenage, doing whatsoever pertains to villenage, and not on account of his person.'* And he has many other passages to the like effect. Britton, who wrote in the same reign, says—'There are some who are free in blood, who hold in villenage.'†

In a large number of manuscript Rentals and Chartularies preserved in the Record Office, and of which some account is given in the Appendix, freeholders, villans, and servi are enumerated as separate and distinct classes. The dates of these documents range from the reign of Edward I. to that of Henry VI. This classification differs somewhat materially from that of Domesday. In that survey, *libere tenentes* are rarely if ever mentioned as a *class*. The tenants of an estate are distinguished as bordarii, villani, servi, sochemanni, liberi homines, &c., but not as *libere tenentes*. This observation is not unimportant. It indicates that free tenants or free holders did not become generally recognised as a distinct class until after the date of Domesday.‡

* Bracton, De Legibus, lib. 2, c. 8.

† Britton, 165.

‡ It is not to be understood that the phrase *liberè tenens* was quite unknown when 'Domesday' was written. I have found one or two isolated instances of

As another evidence that freemen held in villenage, I may mention that in the later documents I have found several instances of clergymen who held in villenage. It is quite certain that ecclesiastics could not be in the position of serfs.* Bracton says (lib. 1, c. 6), that one case in which a free man can become a serf is where one who was originally a serf becomes a cleric or monk, and afterwards returns to secular life; in such case he ought to be restored to his master.

The villani in the middle ages formed so large a proportion of the country tenantry, that it is very important, for the purpose of the present inquiry respecting the agricultural population, to accumulate information respecting their actual status. In a case respecting villenage reported in the fourth Year-book (A.D. 1369, fol. 5, b. 8), it is stated in argument that 'if a villan be once free he can never again be a villan, notwithstanding he is known to hold as a villan in a court of record. For as he made his services on account of tenure, that will not make his body in slavery; because in many manors freemen perform services as neifs † on account of tenure.' This statement is made only in argument, but it is alleged as a matter of common notoriety and is not contradicted. It may therefore be taken as strong evidence of the custom of freemen holding in villenage. The truth appears to be, that the word villanus, like many similar terms, was in the Middle Ages used in several senses. Sometimes, beyond a question, it refers to persons in a state of bondage. Thus in the 'Mirror of Justices'—a compilation which has been attributed to the reign of Edward II., and which is, at all events, very antient—it is said that a villan cannot indict a freeman. In the statute 9 Rich. II., c. 2 recites, 'Whereas divers villans and neifs, as well of great lords as of other people, as well spiritual as temporal, do fly within cities and towns and places enfranchised, as the city of London and other like, and feign divers suits against their lords, to the intent to make them free by the answer of their lords: it is accorded and assented that the lords nor others shall not be forbarred of their villans because of their answer in law.' In 1391, the knights of the

it. Thus, in Warwickshire, at Berdingeberi—Ibi sunt iii. francones homines cum iiii. villanis. Ipsi homines francones tenuerunt libere, T. R. E.

* In the Coventry Cartulary (12 Hen. IV.), at Offchurch, among the *nativè tenentes* is Thomas Offchurch, clericus, who holds 'per scriptum domini ad terminum vitæ suæ.' At Merston (among nativè tenentes) John Reynbolde, 'capellanus,' holds a messuage and land, but claims to hold 'libere per cartam.' At Herdewyke, John Reynbolde, 'clericus,' holds a messuage and land, and pays 13*s.* 4*d.* rent, and certain works which, however, are remitted as long as the lord pleases.

† Neifs are nativi, or slaves by birth.

shire in parliament complain that there are many villans who fly from their lands into cities and boroughs enfranchised, and pray that they may have liberty to enter and take away the villans, notwithstanding the franchises of these places.

In these and many other passages which might be cited from ancient authorities, it is obvious that the word 'villan' applies only to bondmen; but it is equally clear that in the records of the tenantry of estates where a large number of villani are entered, they were not all, nor even generally, in a state of servitude. When they are entered as a class distinct from servi, it seems safe to assume that they were free.

Reverting now to the synopsis of the population at the time of Domesday, which is given in a former page, we find that after the villans, the next most numerous class are the bordarii, coscets, and cotarii, making together a total not much inferior to the villans. The bordarii, coscets, and cotarii may be safely added together for the present purpose, for they were evidently of nearly the same class. Were they free or serfs? Innumerable evidences in Domesday and other antient documents prove that they were not universally, nor even generally, of servile condition. In Domesday it is very common to enumerate the villans, bordars, and serfs on particular manors as distinct classes, and most frequently the number of serfs is less than that of the bordars; for instance, in Norfolk, in the Hundred of Ensfuth, at Hidofestuna, there are said to be twelve villans, twenty-two bordarii, and three servi; at Helmingham, in the same county, there are said to be four villans, nine bordarii, and not one slave (servus modo nullus). Sometimes a distinction is expressly made between those who are simply bordarii, and bordarii who are serfs. Thus in the same county, in Lawendic Hundred, at Elmenham, there are said to be forty-one villans, sixty-three *bordarii*, and four *servi bordarii*. A number of similar instances, taken at random from various counties, are appended in a note; and the list might be extended almost indefinitely.*

* (The word 'tunc' refers to the time of Edward the Confessor; 'modo,' to the time of the return.)

Norfolk.—Hundred of Greneshou: Stoffta semper 3 villani, tunc 19 bordarii, modo 15, tunc 4 servi, modo 1. Hundreda de Brodercros: Colechirca, tunc 1 villanus, modo nullus. Semper 12 bordarii, tunc 4 servi, modo 2. Hund. de Holt: Tornedis, 40 bordarii, 8 servi. Hund. de Grenehov: Hindringham semper 11 villani, tunc 20 bordarii modo 15, tunc 8 servi modo 7.

Suffolk.—Hertesmara, Weringhseta semper 10 villani, 9 bordarii, tunc 4 servi modo 2. Dim. Hund. de Cosforda, Hecham, tunc 30 villani, modo 36; tunc 18 bordarii, modo 26; semper 8 servi.

Northamptonshire.—Neveslund Hundred, Werchintone 16 villans, 8 bordars, 3 servi.

From the examination of this record it is impossible to resist the conviction that serfdom was declining at the time of the Conquest. When the numbers of serfs at that period and in the time of the Confessor are compared, the number at the later date is almost always the least.

'Liberi homines,' says Sir Henry Ellis, 'appears to have been a term of considerable latitude, signifying not merely freemen or freeholders of a manor, but occasionally including all the ranks of society already mentioned, and indeed all persons holding in military tenure.' 'The ordinary freeman before the Conquest,' says Kelham, 'and at the time of compiling Domesday, were under the protection of great men; but what their quality was, further than that their persons and blood was free—that is, that they were not nativi, or boudsmen—it will give a knowing man trouble to discover to us.' That the liberi homines were not always freeholders, appears from the following consideration. The distinguishing characteristic of a freeholder was, that he could sell his land and go where he pleased. But it appears by Domesday that many liberi homines were annexed to particular manors by the command of their superiors. Thus in the description of Essex we read that in Castestuna four liberi homines were added to the manor, after the accession of the king, by his command. Of two liberi homines at Bertune, in Gloucestershire, it is said, 'They cannot separate themselves or their land from the manor.' At Folsham, in Norfolk, the record states that to this manor two liberi homines were annexed (adjuncti) by Radulphus Talibosc. In Suffolk, three liberi homines of the hundred of Wanneforda were added to the manor of Montfort in the time of King William.* 'A certain number of freemen or socmen,'

Wiltshire.—Land of Ernulf de Hesding: Caldefelle 1 serf, 4 bordars. Land of Waleran the Huntsman: Chenete 1 serf, 2 bordars. Langeford 5 serfs, 8 villans, 4 bordars.

Essex.—Hundred of Dommauua (Dunmow): Estanes 4 villans; then 3 bordars, now 8; then 3 serfs, now 2. Canefelda, then 1 priest and 2 villans, now 1 priest and 7 villans; then 3 bordars, now 17; always 2 serfs. Hundred of Tendringe; Almsteda, then 14 villans, now 13; then 31 bordars, now 36; then 6 serfs, now 1.

Surrey.—Land of the Abbey of S. Peter of Certesy (Chertsey).—The Abbey holds in the Hundred of Copedorne (Copthorn), Evesham (Epsom). There are 34 villans, 4 bordars, with 17 ploughs; there are 2 churches and 6 serfs. Land of Richard, son of Earl Gilbert (Richard de Tonebrige). The same Richard holds in demesne Tornecrosta (Thorncroft in Letherhead). There are now in demesne 2 ploughs and 5 villans, and 4 bordars with 2 ploughs. There are 9 serfs and 1 mill of 20 shillings, and 5 acres of meadow. Wood for 1 hog.

* The references are given in the Introduction to 'Domesday,' pp. 236-7.

observes Sir Henry Ellis, 'were necessary to every lord of a manor for holding pleas of a manor court or soke.'* In another place he shows that in some instances socmen were attached inalienably to particular manors, and had not the right of removing from them.†

Of the other classes besides villans and bordars mentioned in the foregoing synopsis of population, the tenants in capite, under tenants or mesne lords, liberi homines, liberi homines commendati, and sochemanni, were undoubtedly freemen. Their aggregate number is 44,481. So that we have the following result:—

Free . . .	44,481
Serfs . . .	25,156
Mixed . . .	197,339
Total .	266,976

The mixed class are the villans and bordars. The incessant mention of them in Domesday as distinct from serfs seems to show that the great bulk of them were free; but the proportion of the bond to the free cannot now be ascertained with precision.

Unfortunately we have no record of the agricultural population at a later period of mediæval history so complete as Domesday. The Hundred Rolls, however, supply a great mass of interesting information on the subject. Indeed, these valuable records seem to have been somewhat unduly neglected by constitutional writers. They are in several respects more valuable than Domesday itself; for they give more minute accounts of the tenants of manors, and usually record their names and the particular services which they were severally required to perform. The second volume of the Hundred Rolls, which were printed by the authority of the Record Commissioners in 1818, is the most convenient for our present purpose. It contains Rolls of Inquisitions of the 7th and 8th years of Edward I., taken by virtue of a commission which directs a survey of villans, bondmen, cotars and free tenants, separately. The inquisition requires a return of the persons 'who hold in demesne as in demesne; in villans as in villans; in serfs as in serfs; in cotars as in cotars; and afterwards in free tenants as in free tenants'‡—which expression probably means that each

* Introduction to 'Domesday,' vol. i. p. 63.

† *Ibid.* p. 71.

‡ Et qui ea tenant in dominico ut in dominico, in villanis ut in villanis, in cotariis ut in cotariis, et postmodo in liberis tenentibus ut in liberis tenentibus.

of these classes is to be returned separately; and so the returns are made out. This direction is of itself a valuable piece of information; for it shows what were the general distinctions of tenants at the period. The expression liberi, or liberè, tenentes which is frequent in these Rolls, occurs very rarely in Domesday, and must therefore have come into general use after the compilation of that record.

If the same minute enumeration which has been made of the population mentioned in Domesday were made with respect to the Hundred Rolls, we should have some very valuable statistics indicating the changes in the distribution of different classes which occurred in the interval between William I. and Edward I. But this investigation would be extremely laborious. From my own examination of these Rolls I cannot detect any great and marked changes of this kind. In some manors the free tenants and socmen far outnumber the villans, cotars, and serfs. The returns of only five counties—Bedford, Buckingham, Cambridge, Huntingdon, and Oxford are given. In Huntingdonshire, at Gomecestr', in answer to the enquiry, 'What and how much each free tenant per cartam, or free socman or bondus, holds of our Lord the King *in capite* or *per medium*, and by what service;' the reply, made rather proudly, as we may conjecture, is—'As to this they say that they are free socmen, and there is no bondman among them.' And then follows an enumeration of no fewer than 586 tenants, their names, holdings, and rent or services. The holdings are usually of very small extent. The Prior of Merton has upwards of 70 acres; but the other tenants have for the most part about four or five acres, and rarely so much as sixteen acres. Many of them have only a rood or two of land.

There are many instances in the Hundred Rolls in which the libere tenentes are by far the largest class of tenants. In the Hundred of Thame, in Oxfordshire, they are many times more numerous than the others, the custumarii and cotarii. At Stepelaston, in the same county, there are forty free tenants and only two who hold in villenage. At Gamelingeye, in Cambridgeshire, forty-three free tenants to nine cotars, and about the same number of custumarii. But in other places the predominance is the other way. For example, at Northlege, in Oxfordshire, there are mentioned only one free tenant and two 'adhuc libere tenentes,' while there are upwards of seventy who hold in villenage, and forty cotars. But this proportion is very unusual. Possibly, on a minute investigation of the circumstances of different manors, the reasons of the great varia-

tions in the distribution of these different classes might in some cases be discovered.

In the Hundred Rolls we have again abundant evidences that villans and cotars were not generally in a state of servitude. At Scharnebroc, in Bedfordshire, we have an enumeration of cotars 'who are not serfs, but hold to farm' (cotarii qui non sunt servi sed tenent ad firmam).* At Wallhulle there is a list of upwards of thirty persons who are expressly called free cotars (liberi cotarii). In Turveya seven 'free cotars' are mentioned, and they are said to hold in libero cotagio. At Kynebolton, in Huntingdonshire, four free coterells have cottages and pay rents varying from 6*d.* to 2*s.* 6*d.* per annum. The services of tenants, whether in money or labour, are generally fixed and definite. Sometimes we find an entry that certain villans are under the will of the lords as to their labour and holdings, but the proportion of persons thus dependent is certainly much smaller than at the period of Domesday.

Much information respecting the distribution of the agricultural population at a later period, is contained in the manuscript cartularies and rentals which are preserved in the Public Record Office. Of some of these documents, relating mostly to the reigns of Henry IV. and Henry VI., abstracts are given in the Appendix to this work. They do not show any very marked variation in the relative numbers of free tenants and the other classes. But they indicate very clearly that in the fifteenth century absolute servitude had become rare, and that the land was generally divided in small portions held at fixed rents, either in money or labour or both. In a word, the great bulk of the agricultural population in the fourteenth and fifteenth centuries were peasant proprietors, who were under the obligation of assisting in the cultivation of their landlord's estate, but had a secure legal title to their own holdings.

* Firma meant sometimes a pecuniary rent for lands &c. let to tenant, sometimes, by a metonymical mode of expression, the land so let, and sometimes the lease or contract of letting. See Spelman, in voc. Firma, where, as an example of the latter meaning, he quotes this passage from Ingulphus Saxon. Hist. Croyl:—'Nostram esse possessionem non firmariorum reputant et affirmant, cum adhuc 20 anni de firma illorum restent antequam centum anni concessi . . . . compleantur.'

CHAPTER III.

THE SAXON COUNTY COURT.

Courts of Hundreds and Counties.—Folcmot, 22.—*Shire moot at Egelnorth's stone*, 23.—*Rank of Thanes*, 24.—*Shire moot at Cuckamslow*, 25.—*Popular character of these Courts*, 26.—*Assemblies at Ely*, 24.—*At Northampton*, 26.—*At Huntingdon*, 27.—*At Erith*, 28.—*At Penenden Heath*, 29.—*The Ealdorman*, 30.—*Assembly of Bishops, Earls, and Villans of Kent*, 32.—*Villans present in local assemblies*, 34.—*Meetings held in the open air*, 36.

From the very commencement of Parliaments knights of the shire were elected in the county courts by the persons entitled to attend there. It is, therefore, necessary to ascertain the constitution of these assemblies, in order to determine the nature of the original county suffrage.

The enquiry involves considerable difficulties. The information derived from contemporaneous authorities is frequently obscure and provokingly imperfect. Points of the highest interest to us are by antient writers passed over almost unnoticed, as matters of common notoriety. It is only by patient examination and comparison of fragments of knowledge collected from many sources that we are able to form any safe conclusions on this subject. Almost every matter connected with the antient constitution of the county courts has in later times become the foundation of a political controversy. Were the suitors—those who owed suit or attendance to these tribunals—a numerous or a restricted class? The question is closely connected with another of more direct interest in later times, Was the county suffrage democratic or oligarchical? These enquiries involve so much dispute that no assertions on the subject ought to be accepted without the support of direct evidence.

Before the Conquest the ordinary local administration of justice took place in the courts of hundreds and of counties. The litigant was first to seek justice in the tribunal of the hundred—a division of the county—and from thence he had an appeal to the court of the shire itself.*

Folcmot was the Saxon name for a general meeting of the people (folc, populus; gemote, môt, or moot, conventus). These popular assemblies were frequently held in the open air. Spel-

* Laws of Cnut, § 18.

man, in his glossary, observes:—'It was the antient custom for the people to meet in the open air, and within some military entrenchment, for the sake of safety, and that they might not be drawn into an ambush. There still exist in England many such places in which pleas of counties, rapes, and hundreds are held to this day.'* Sir Francis Palgrave, in his 'English Commonwealth,' has distinguished several localities which are recognised as the sites of antient Folcmotes. In the following account of Anglo-Saxon Councils it will be observed that several of them are expressly stated to have been held in the open air. From the Saxon charters, the mediæval chronicles, and the collection of Saxon laws, we obtain valuable, though not complete, information respecting the practice and procedure of county courts before the Norman era. This information is of essential importance in an investigation of the county suffrage at a later date. The Saxon institution not merely survived the Conquest, but, as will be hereafter seen, was continued, without any substantial alteration, to the Plantagenet times. Resort to the earlier authorities is, therefore, a matter, not of choice, but of necessity in the present investigation. They serve to demonstrate much that would otherwise be obscure in the practice of the shire court at the later period, when its machinery was employed for the purpose of electing members of Parliament.

The celebrated Anglo-Saxon scholar Dr. Hickes,† who was Dean of Worcester in the last century, drew attention in his 'Dissertatio Epistolaris' to various remarkable documents illustrative of Saxon judicature. One of them relates to a county court held in the reign of Cnut at Ægelnorth's stone, now Aylston, in Herefordshire, and commences to the following effect:—‡

'Here is made known in this writing that a shire moot sat at Ægelnorth's stone in the days of King Cnut. There sat Æthelstan bishop and Ranig ealdorman, and Eadwine the ealdorman's son and Leofwine Wulfige's son and Thurkil White; and Tofig Prud came there on the king's errand. And there were Bryning shire reeve and Ægelweard at Frome and Leofrine at Frome and Godric at Stoke and all the thanes

* 'Glossarium in voce Mallobergium.'

† Georgii Hickesii S. T. P. de antiquæ literaturæ septentrionalis utilitate, sive de linguarum septentrionalium usu Dissertatio Epistolaris. Oxoniæ, 1703, fol.

‡ This document is also given in Mr. Thorpe's 'Diplomatarium Anglicum Saxonici ævi.' London, 1865. 8vo. The translation in the text is that of Mr. Thorpe.

in Herefordshire. Then came there to the moot Eadwine Eanwen's son and there raised a claim against his own mother to a portion of land namely at Wellington and Cradley. Then asked the bishop who would answer for his mother? Then answered Thurkil White and said that he would if the claim were known to him. As the claim was not known to him three thanes were selected from the moot [who should ride] to where she was and that was at Fauley.'*

This record goes on to give a curious account of the manner in which the land was ultimately adjudged to her kinswoman Leofloed, who was wife of Thurkil, and concludes thus:—'Then Thurkil White stood up in the moot and prayed all the thanes to grant to his wife the lands which her kinswoman had given her. And they did so. And Thurkil then rode to Saint Æthelberht's monastery with the leave and witness of all the folk and caused it to be set in a Christ's book.'

This document is valuable for the information which it gives respecting the constitution of the shire moot. The president is the bishop sitting with the ealdorman and the sheriff of the county. The great body of the members of the court who ultimately adjudicate the land to Thurkil's wife are the *Thanes*. This word is used in Saxon documents in various senses. Dr. Hickes translates it in this place *liberi homines*, freemen. If this translation be strictly correct, it follows that all persons of free condition were members of the county court sitting judicially. The material question of the rank of thanes will be noticed hereafter in connection with some other records of the time of Æthelstan. In the remarkable Saxon document entitled 'Rectitudines Singularum Personarum,'† thanes are described next before *villani* and apparently rank as the next superior class; and the taxes to which according to that document they are subject—the reparation of bridges and of fortified places, and assistance to repel invasions, in later times called the *trinoda necessitas*—are those to which all freemen would probably be required to contribute. But on the other hand, there are some passages in the 'Antient Laws' which favour the idea that a thane was a person somewhat above the lowest rank of freemen.‡ The document entitled 'Ranks' states that if a ceorl or villanus throve so that he had five hides of his own land, and some other qualifications, he became thenceforth worthy of 'thane-right.' According to Mr.

* 'A village five miles from Aylston. Hickes, *ubi supra*.

† 'Antient Laws and Institutes of England,' p. 184.

‡ 'Antient Laws,' &c., p. 81.

Kemble's computation of the hide, the person thus described would be the possessor of about 150 acres of land.*

A charter† of the reign of Æthelred, some time before 995, relates to a claim of land brought in the first instance before that king on the application of one claimant Wynflœd and subsequently, at the instance of the other claimant Leofwine, referred to the county court. The king having heard Wynflœd, who produced her title, 'sent forthwith by the archbishop and by those who were there to witness with him to Leofwine and made this known to him. Then he would not [comply] unless it were carried to the shire-mote. And they did so. Then the king sent by Abbot Ælfere his brief to the mote at Cuckhamslow and greeted all the witan who were there assembled. That was Æthelsige bishop and Æscwig bishop and Ælfric abbot and all the shire. And prayed and commanded that they should reconcile Wynflœd and Leofwine as justly as might ever seem to them most just.'

This document is a remarkable proof that the appeal to the county court, even from the king himself, was claimed not as a favour but as a matter of right. Leofwine, upon receiving notice of the title adduced by his opponent, refuses to submit to any adjudication but that of the shire-mote; and accordingly that tribunal is set in motion by a writ from the Crown. Dr. Hickes comments on the conformity of this procedure with the law of Cnut (sect. 80). 'And he who has land assured by the witness of the shire, let him have it undisputed during his day and after his day to sell and to give to him who is dearest to him.'

In the cause in the county court at Cuckhamslow to which we have referred, the persons assembled are said to have included all the shire (eal sio scir). In other records the members of the court are described in still wider terms. In the antient 'Historia Ecclesiæ Eliensis,' given in Gale's 'Historiæ Scriptores,' and written by a monk of Ely in the twelfth century,‡ there is a curious account of a lawsuit shortly after the death of King Edgar respecting some land in Northamptonshire, which one Lessius claimed against the Bishop of Ely. The cause was in the first instance heard in London, and afterwards reheard—apparently by way of appeal—in the county

* Kemble, 'The Saxons in England,' vol. i. p. 109.

† It is given in the 'Dissertatio Epistolaris'; and also in the 'Codex Diplomaticus.'

‡ Historiæ Britanicæ, Saxonicæ, Anglo Danicæ Scriptores XV. ex Vetustis codd. MSS. Editi Opera Thomas Gale. Vol. i. p. 468.

court of Northampton, where it is said to have been decided by 'all the people.' The history states that 'eight days afterwards they assembled again at Northampton, and there being congregated the whole province or shrievalty (vice comitatu) they again expounded the said cause before all; which being expounded and declared, like as it had been previously decided at London, they also at Northampton adjudged. Which being done, all the people (omnis populus) with an oath on the cross of Christ restored to the bishop absolutely what was his own.'

The same writer gives numerous accounts of sales of land in the presence of assemblies of Hundreds; and these meetings seem to have been held occasionally in the precinct of the cathedral. Thus, in an account of land at Staneie (cap. 27) it is stated that Wlstanus, of Dalham, came to Ely, 'and with him many *barones*, and two Hundreds being collected there towards the north at the gate of the monastery, held plea. Then came to him a certain widow by name Æsumen, and with her came many of her kinsfolk and neighbours, who before them all gave to Wlstan Staneie and the fishery which she had there. Then arose Ogga de Mildenhalle and silence being made he says, "Beloved, I will you to know that I give to S. Etheldryda after my day a hide of land at Cambridge." Whereupon arose Wlstan and before them all gave to S. Etheldryda the land and fishery of Staneie which the said widow had given him. Then he addressed Ogga, and said to him, "Since, beloved, thou hast begun to reverence the glorious virgin Ætheldryda, delay not to do that which thou art about to do; that which thou desirest to do is good, but it were better to accomplish it in thy lifetime." Which counsel Ogga approving, did as he had said.' In a subsequent chapter of the narrative it is stated that the fishery or pool here mentioned was subsequently for many years let to certain kinsfolk of the widow at a rent of two thousand eels, and that after a time the tenants who held this fishery on lease unjustly took possession of some land of the monastery at Staneie. The dispute was the subject of much litigation. 'At length Ægelwine, the alderman at Cambridge, held there a great court of the citizens and people of the Hundreds (placitum civium et Hundretanorum) before xxiv judices under Thorningefeld, near Maidenburge.' The land was awarded to the abbot, and the lessors were ordered to pay the fish of six years.*

The references to judicial assemblies are frequent in this history of Ely, and some of them convey valuable information respecting the constitution of the Anglo-Saxon tribunals. A

* 'Historia Eliensis,' cap. xxxiv.

curious account is given of the purchase by the abbey of Ely of land at Bluntesham, from Wlnothus, for thirty pounds. Five pounds were paid to him at Ely, and 'the xxv pounds which remained were paid to him before the King Edgar and his wise men; which being done, Wlnothus in their presence delivered Bluntesham to the bishop with a deed.' But afterwards the title of Wlnothus was disputed by one Boge, who asserted a prior title, alleging that the land had descended to him from his grandmother. The narrative proceeds: 'After these things there was assembled the whole county of Huntingdon by Beornotho the alderman and by Afwold and by Ædric. Forthwith there was a very great assembly. Wlfnoth is summoned and brings with him faithful men, namely all the better men (meliores) of vi Hundreds, and Lessius, now of Ely, produced there the deed of Bluntesham, who being all gathered together they explained the claim and ventilated (ventilaverunt) and discussed the cause; and the truth of the matter being known they by their judgment took the land from the sons of Bogan. . . . . Then Wlnoth produced more than a thousand men, that by their oath he might assert his title to that land; but the sons of Bogan were unwilling to take the oath, and so all determined that Wlnoth should have Bluntesham, and faithfully promised to be his helpers in this matter and to bear witness what they had then done if ever at any other time he or any of his heirs had need. And when all this was done Bishop Œdelwold gave to Wlnoth xl shillings and an armlet worth iii marks because he had labored much in this and was about to go beyond the sea in the service of God.'

Two instances have been cited of county courts—one at Cuckhamslow, in Berkshire, and one at Northampton—which decided causes after they had been primarily heard by the sovereign. The following is a remarkable example of the same nature. It shows in a very striking manner the independence of the shire mote; for in this instance the popular judgment not only reversed the prior decision in the king's court, but annulled an adjudication in favour of the king himself. It relates to land at Bromley and Fawkham, adjudged to King Eadgar by the royal court in London, and subsequently sold by him for a large sum of money to the Bishop of Rochester. There was a prior title set up by Æscwyn, a widow. The record states that after the king's death, 'Bryhtric, the widow's relative, began and compelled her, so that they took violent possession of the land. And they sought Eadwine the ealdorman, who was God's adversary, *and the folk*, and compelled the bishop to restore the

books [*i.e.* the title-deeds] on peril of all his property. He was not allowed to enjoy his rights in any one of the three things which had been given him in pledge by all the leodscipe—neither his plea, his succession, nor his ownership.'* The *leodscipe* must have been the king's royal court, which, as appears by the context, included the King Eadgar and several prelates and nobles. The writer of the account shows his partisanship by styling the presiding officer of the county court 'God's adversary.' The material point is that the jurisdiction of the local tribunal was considered incontestable even in a case in which the king and nobles were interested in disputing it.†

The county courts, on some occasions of special interest, attracted vast gatherings of people. In the venerable document called the 'Textus Roffensis,' a MS. belonging to Rochester Cathedral, and supposed to have been written about A.D. 1120, there are remarkable accounts of two great assemblies of that kind held in Kent, the one some time before A.D. 988, the other in the reign of William the Conqueror.‡

The earlier instance relates to a great shire-mote held at Erith, in Kent, in which upwards of a thousand persons took part. The subject of adjudication was certain land at Wouldham, given to S. Andrews at Rochester by a devise, the validity of which was disputed by Leofsunu, who had married the widow of a former owner. The will under which the Church of Rochester claimed had been made in the presence of Archbishop Dunstan. The Saxon accounts state that 'Leofsunu,

* 'Codex Diplomaticus Ævi Saxonici,' No. 1258. This remarkable collection of Saxon charters, published by the English Historical Society, and the Diplomatarium already cited, are the most important recent contributions of authentic materials for the study of Saxon laws and institutions.

† Mr. Kemble, in his 'Saxons in England,' commenting on this document, says: 'The matter was brought in the king's theningmanna gemot in London, and there decided in favour of the plaintiff, a bishop. But the defendant was not satisfied, and carried the cause to the shire, who at once claimed jurisdiction and exercised it too, coming to a decision diametrically opposed to the theningmen or *ministri regii*. It seems to have been a dirty business on the part of the Bishop of Rochester, and the freemen of Kent so treated it in defiance of the king's court.' Vol ii. p. 46.

‡ 'An historical account of that venerable monument of antiquity the Textus Roffensis,' by Samuel Pegge, M.A. (London, 1784, quarto) attributes the book to Ernulf, Bishop of Rochester, who died A.D. 1124. The MS. consists of two parts—the Laws of Anglo-Saxon Kings, and a Register or Chartulary of Rochester Cathedral. An edition of the 'Textus Roffensis,' by Thomas Hearne, was published at Oxford in 1720.

The passages in the 'Textus Roffensis' relating to the shiremots at Erith and Penenden were noticed as early as 1656 by Lambard in his 'Perambulation of Kent,' p. 484 and p. 236.

through the wife he had taken, Eadric's relict, violated the testament, and contemned the archbishop's witnessing; rode then into the land with the woman without the decree of the witan. When that was made known to the bishop, then the bishop laid claims in all Ælfeh's testament at Erith in the witness of Ælfstân bishop of London, and of all the convent and of that of Christchurch and of the bishop Ælfstan of Rochester and of the shireman, Wulfsige's priest and of Bryhtwald at Mereworth, and of all the East Kentishmen and West Kentishmen. And it was known in Sussex and in Wessex and in Middlesex and in Essex. And the Archbishop with his own oath claimed for God and S. Andrew, with the charters, in Christ's rood, the lands that Leofsunu took to himself. And Wulfsige the shireman on the part of the king received the oath as he [Leofsunu] declined it. And there was a good addition of ten hundred men who gave the oath.'*

It is apparent from this document that county courts had jurisdiction in testamentary causes. The corresponding Latin account, which also appears in the 'Textus Roffensis,' says, 'The archbishop appointed a day for this plea at Erith;' upon which Dr. Hickes, who has given the record in his 'Dissertatio Epistolaris,' observes that the archbishop and similarly the bishops within their jurisdiction had power of summoning the *comitia* of the counties.†

The same Rochester manuscript gives a very interesting account of another very remarkable assembly at Penenden Heath in the reign of William the Conqueror. The account is entitled 'A Plea at Pinenden between Lanfranc Archbishop of Canterbury and Odo Bishop of Bayeux.'‡ Odo, who was a brother of the Conqueror, had been raised to the dignity of Earl of Kent, and subsequently Vice-regent of the kingdom. The record states that he, during the absence of Lanfranc from the realm, unlawfully took possession of various lands belonging to the Archbishopric of Canterbury. On the requisition of the archbishop, 'the king commanded the whole county to assemble together, and that *all the men of the county*, French-born and especially English, should assemble at one place, who when they were met together at Pinenden all sat equally together. And since many pleas of determinations of lands and discussions respecting the customs of the laws arose

* This translation is taken from Mr. Thorpe's 'Diplomatarium,' p. 271.

† 'Dissertatio Epistolaris,' p. 60.

‡ It is transcribed by Spelman in his notes appended to his edition of Eadmer: 'Eadmeri Monachi Cantuarensis Historia.' London, fol. 1623, p. 197.

between the archbishop and the said Bishop of Bayeux, and also between the archiepiscopal and regal customs which could not be finished on the first day, for that reason the whole county was detained there three days. . . . . And by all those good and wise men who were there present it was so determined, and also by the whole county recorded and judged, that as the king himself holds his lands free and quiet in his demesne, so the Archbishop of Canterbury holds his lands altogether free and quiet in his demesne. At this plea were present Goisfrid Bishop of Normandy, who was in loco regis, and held his justice; Lanfranc, archbishop, who, as was said, pleaded and proved the whole; the Earl of Kent, viz. the said Odo Bishop of Bayeux; Ernostus Bishop of Rochester; Ægelric, Bishop of Chichester, a very aged man, and most learned in the laws of the land (who, by the command of the king, was brought there in a carriage to discuss and explain the antient customs of the laws); Richard Earl of Tunbridge, Hugo de Mountfort, William de Arces, Haymo the sheriff, and many other barones and other men of other countries also, with the whole of that county, men of much and great authority, French-born and English.'

Penenden Heath, as Lambard observes, lies almost in the middle of Kent, and therefore was very suitable for the assembly of the whole county. He observes 'that the commodity of the situation itself, and the example of this notable assembly, have been the cause that not only the sheriffs use to hold their county courts, but also to appoint the meeting for Knights of the Parliament most commonly at this place.'* It may be added, as a curious instance of the duration of local customs, that the nomination of representatives for the western division of the county takes place at the present day on Penenden Heath.

It will be observed that in this record the decision is said to have been determined by the 'good and wise men,' and to have been recorded and judged by the whole county. (Et ab omnibus illis probis et sapientibus hominibus qui affuerunt fuit ita ibi diratiocinatum et etiam a toto comitatu recordatum atque judicatum.) The difference of phrase with respect to the more learned members of the tribunal and the commonalty clearly shows the different nature of their functions: the former determined the law, the latter judged and recorded.

Again, in another cause, mentioned in the Textus Roffensis

* 'Perambulation of Kent,' p. 239.

(cap. 91), a dispute between Gundulf Bishop of Rochester and Pichot Sheriff of Cambridgeshire, in the reign of William I., respecting land at Giselham, the cause was referred to all the men of the county. 'The king commanded that all the men of that county (omnes illius comitatus homines) should be assembled, and that by their judgment it should be proved whose the land most rightly ought to be.'

In the earlier county courts the ealdorman appears to have uniformly acted as a chief officer. The Laws Edgar (II. § 5) have a provision to this effect: 'And thrice a year let the borough gemot be held, and twice a year a shire gemot; and let there be present the bishop of the shire and the ealdorman, and there both expound as well the law of God as the secular law.' There is a similar provision in the secular laws of Cnut (§18).* Down to the time of the last-mentioned king the internal regulation of the shire, as well as its political relation to the whole kingdom, were under the immediate guidance and supervision of the ealdorman or duke: the scirgerefa or sheriff was little more than his deputy. The new constitution introduced by Cnut reduced the ealdorman to a subordinate position: over several counties was now placed one eorl or earl. From that time the king's writs were directed to the earl, the bishops, and the sheriff of the county, and gradually the old title of ealdorman came to denote a very inferior jurisdiction.† In the shire moots held in and after the time of Cnut, the sheriff seems to have frequently sat without the ealdorman. This was evidently the case with respect to the assembly at Ægelnorth's Stone mentioned in a previous page. So also in the great trial at Erith, in which Archbishop Dunstan bore a conspicuous part. Though there is a particular enumeration of persons present, the ealdorman is not mentioned.

A subject of more immediate importance with reference to the investigation of the parliamentary suffrage of later times, is the presence of the inferior classes in the shire mote. There are strong reasons for supposing that the right to attend that assembly remained in the Norman and Plantagenet times substantially the same as in the Saxon era. There is not the

* 'Antient Laws and Institutes of England.'

† Kemble, 'Saxons in England,' vol. ii. chap. 4. The learned author says, with reference to the Saxon period, 'Gradually the old title ceases altogether, except in cities.' This, however, is not quite correct. I find that it lingered in counties as late as the reign of Edward I. Aldermen of hundreds are several times mentioned in the 'Hundred Rolls' with reference to the county of Sussex. See 'Hundred Rolls,' vol. ii. pp. 205, 217.

slightest trace of any alteration of the laws in this respect, and the legislation after the Conquest proceeds evidently on the assumption that the old institution and its usages remained unimpaired. But the knights of the shire, when parliaments became established, were elected by all persons who had a right to be present in the county court. Hence it becomes indispensable, for the purpose of our enquiry, to ascertain who had that right before the Norman period.

We have very strong evidence that the lowest class of the people of free condition were entitled to be present. A very remarkable document, addressed by the people of Kent to King Æthelstan, referring to Acts passed by his council of Feversham, is entitled in the Latin version, 'Decretum Episcoporum et aliorum sapientum de Kancia de pace observanda,' and commences as follows:*—'Dearest! thy Bishops of Kent and all the Thains of Kentshire, *Earls and Villans*, give thanks to thee, their dearest lord, because thou has been willing to command us to inquire and consult concerning our peace and concerning our welfare, because there is great need thereof to us both rich and poor.

'And this we have begun with all the diligence we could, by the aid of those wise men whom thou has sent to us. Wherefore, dearest lord, the first matter is concerning our Tenth, as to which we are very ready and willing, and supplicantly return thee thanks for thy admonition.

'The second matter is concerning our peace, which all the people desire to be held as thy wise men have established at Greateley, and as also has now been declared in the council at Favresham.'

After other articles specifying various amendments of the laws, the document concludes thus:—

'Eighth. That we are all content concerning scutage, as thou has said.

'We pray, Lord, thy clemency, if in this writing there be either too much or too little, that thou wilt order it to be amended according to thy will. And we are devoutly ready for all things which thou wilt command us, which we by any means are able to fulfil.'

Mr. Hallam,† commenting on this document, says: 'The whole tenor of this letter, which relates to the laws enacted at the Witenagemot or grand synod of Greatanlea (supposed

* 'Antient Laws and Institutes of England.'

† 'Supplemental Notes to the View of the State of Europe in the Middle Ages' (London, 1848, 8vo.) p. 229.

near Andover), though it expresses approbation of those laws, and repeats some of them, with slight variations, does not in my judgment amount to a distinct enactment of them; and the final words are not very legislative. . . . . It is, moreover, an objection to considering this a formal enactment by the witan of the shire that it runs in the names of the *thaini, comites, et villani*. Can it be maintained that the ceorls ever formed an integral element of the legislature in the kingdom of Kent?'

To this question, it may be answered that the effect of antient documents ought to be ascertained from the records themselves, and not from preconceived notions of what would be proper to be found in them. The 'decretum,' just quoted, seems free from obscurity. It is distinctly the act of the whole people of Kent, bishops, nobles, and villans. It thanks the king for his permission to enquire into the laws. Then follows a statement that the people have set about this task with the utmost diligence, with the aid of the wise men whom the king had sent to them. The amendments approved are not mere repetitions of those passed by the king's councils at Greatanlea and Feversham, but differ from them very materially in several particulars. The Kentish decree ratifies generally the enactments of those councils, but adds several entirely new and very important provisions. Therefore it must be understood that the will of the people of Kent was expressed independently in this 'decretum.' Indeed, that very title shows that it was understood to be an authoritative act, though expressly made subject to the king's assent. The submission to the royal will in the last paragraph does not amount to more than a recognition of the king's right of veto. The same right is recognised in the enacting formula of every bill which passes through parliament at the present day.

But this is not a solitary instance of villans or ceorls being associated with the higher classes in the administration of public affairs. A document,* addressed to people of Kent, respecting the confirmation of the liberties of Christchurch, Canterbury, commences thus: 'I, Cnut, king, greet Lyfing, archbishop, and Godwine, bishop, and Ælmær, abbot, and Æthelwine, shireman, and Æthelric and all my thanes *twelfhynd* and *twihynd*.'† Twihynd is synonymous with villan or ceorl, and the common

* 'Diplomatarium,' p. 308.

† 'Twyhynde man; a man whose wer-gi'd was two hundred shillings. This was the lowest class of freemen, otherwise called *ceorls*.'

Ceorl—'a freeman of ignoble rank; a churl, twy-hinde man, villanus, illiberalis.'—*Antient Laws and Institutes of England*: Glossary.

phrase 'twelfhynd and twihynd,' like the equally common phrase 'earl and churl,' denoted freemen from the highest to the lowest. The charter goes on to confirm the immunities granted to Christchurch by King Æthelbyrht. This instrument is addressed to the county as a formal notification of the grant which the king had made to the archbishop. From the dignity of the parties concerned, and the solemnity of the transaction, it may be supposed that the language of this charter was well considered. As in the 'decretum' of Kent, just cited, the shire, as a body politic, is described as comprising, besides the higher classes, the ceorls or villans.

In after times, when parliamentary institutions were established, the practice prevailed for many centuries of sending the statutes at the end of each session to be proclaimed by the sheriff in each county court. A similar practice, but with some material differences, existed among the Anglo-Saxons. After the conclusion of a witenagemot, the reeves carried the chapters down to the several counties and there took the *wed* or pledge from the freemen that they would abide by what had been enacted.*

Thus, in the 'Judicia Civitatis Lundoniæ,'† passed in the reign of Æthelstan, we find: 'That all the witan gave their pledges [weds] altogether to the archbishop, when Ælfeah Stybb and Brihtnoth, Odda's son, came to meet the gemot, by the king's command; that each reeve should take the wed in his own shire that they would all hold the "frith" [peace] as King Æthelstan and the witan had counselled it.' And at the commencement of the same collection of laws it is stated that they were confirmed by the oaths and pledges of all, both *earls and churls* (ægther ge eorlisce ge ceorlisce). Thus, the laws were required to be ratified by the pledge and promise of the people of all ranks; whereas, in later times, nothing of the kind took place with respect to Acts of Parliament; they were simply proclaimed in the county court, as the most convenient way of making them known. But the acts of the witenagemot were considered to acquire force from the oath which the people took to observe them. This is evident from several passages in the Saxon laws. For instance, in the laws of Æthelstan (iii. § 3) we find a complaint 'that the oaths and pledges which were given to the king and his wise men are always broken, and less observed than is proper for God and the times.' In another passage of Æthelstan's laws it is said (iv. § 1): 'Æthelstan the

* Kemble, 'Saxons in England,' vol. ii. p. 233.

† 'Antient Laws and Institutes of England,' p. 97.

king makes known that I have learned that our peace is worse kept than is pleasing to me or than was ordained at Greatley; and my witan say that I have borne with it too long. . . . because the oaths and weds and pledges [borhs] are all disregarded and broken which were then given.'* These passages show that the obligation of the people was considered to be founded on their personal consent and undertaking to observe the laws.

If the popular character of the county court were exceptional and inconsistent with other parts of the Saxon polity, we might regard the evidence which has been adduced on this point with distrust. But other Saxon institutions were equally democratic. The elaborate system of testing a man's fitness for political power by the value of his property was an invention of much later times, and was altogether unsuited to the primitive condition of society before the Conquest. We know that the witenagemot, or great council, held in the presence of the king, was often attended by a large concourse of the common people. Possibly their share in the actual conduct of legislation was small. Still, their mere presence, and the freedom with which they exercised the right of *conclamation*, as it has been happily called, tended to restrain unpopular measures. Moreover, the old documents, even those of the highest official character, frequently note with evident care and respect the expressions of popular assent; a circumstance which shows that it had its value and effect in the councils of the nation.

Among other examples of the presence and influence of the populace in great Saxon councils, the following may be cited. The deposition of Sigeberht is stated to have taken place in a convention of the *proceres* and *populus*, the chiefs and people of the whole realm. According to Henry of Huntingdon this was not a tumultuous proceeding, but the deliberate, orderly act of a regularly constituted assembly. 'Whereas King Sigebert was a man of incorrigible pride and wickedness, in the second year of his reign the chiefs and people of the whole realm met, and by careful deliberation and unanimous consent of them all he was expelled from the realm.'† It must be observed, however, that Henry of Huntingdon lived long after the events

* Referring to the 'Judicia Civitatis Lundoniæ' above cited, Sir Francis Palgrave says: 'Legislation was the prerogative of the sovereign and his witan. Still the mode of accepting the statutes, and of carrying them into effect, depended upon the deliberations of the burghmot and the discretion of its members.'—*English Commonwealth*, part i. chap. 21.

† 'Henrici Huntindoniensis Hist. lib. iiij. Rerum Anglicarum Scriptores post Bedam,' p. 196.

which he narrates, and therefore his statement has not that authority of contemporaneous evidence which attaches to the various Saxon documents cited in this chapter.

Thus, by a charter of Æthelstan,* a gift of land by the king to his officer Ælfwald is made at Winchester in a general assembly of the people (tota populi generalitate). Another charter of the same king grants certain lands which had escheated by the felony of the former owners; and it is stated that, 'By a most just judgment of the *whole people and* of the seniors and chief men, it was taken away from those who had been possessors of it because by manifest crime of robbery they had been found deserving of death. And therefore it was decreed by the whole people that the conveyance which they held of those lands should be cancelled.' Here a distinction is drawn between the people and the chief men; they are described as the two classes composing one national body. Another charter of Æthelstan records a meeting of the witan at Abingdon and a grant to the abbey, to which all the people ('populus,' 'folc') assented, exclaiming, 'So be it! Amen, amen.'†

From such examples it is abundantly proved that the Anglo-Saxon councils were frequently attended by large multitudes of people, including those of the lowest class. The popular character of these assemblies was in a great measure due to the common practice of holding them in the open air. We have already referred to some instances in which county courts and other general meetings were so held. In various parts of the country there are places which, by their names and traditions, are shown to have been the sites of these gatherings. But the most illustrious example is Runemed, the scene of King John's great charter. Matthew of Westminster describes the convention which took place on that occasion as follows:—'In the same year a very great consultation was held between the king and barones concerning the peace of the realm between Stanes and Windsor, in a meadow which is called Runemed (which is interpreted *the meadow of council*), because from antient times councils were held there concerning the peace of the realm.' ‡

* 'Codex Diplomaticus,' No. 364.

† 'Codex Diplomaticus,' No. 374 and No. 1129. For the references in this paragraph and others in this chapter I am indebted to Mr. Kemble's work; but I have consulted the authorities cited, and dealt with them in my own way.

‡ 'Flores Historiarum per Matthæum Westmonasteriensem Collecti (in anno 1215).' The name of this meadow is variously spelled in different copies of Magna Charta, Runingmed', Runigmed', and Ronimed'. See 'Blackstone's Law Tracts,' Magna Charta, xxiii.

'Some call this place Runemede, which if it be the true name, then was it

Sir Francis Palgrave has strongly insisted on the important practical effect of these open-air assemblies in keeping alive the popular spirit of our antient institutions. He observes that, 'by assembling in the open air, the suitors of the hundred and the shire courts retained an importance which they would have lost had they been confined within the limits of the Moot-hall; and it is not too much to assert that the present influence of the great body of the people is in a great measure derived from the mode and manner of their meeting. William the Conqueror, by enacting a law like the capitulary of Charlemagne, would have more effectually checked the growth of the influence of the English people than by erecting all the massy dungeon-towers whose ruins are yet frowning over the land. If, instead of causing the men of Kent to assemble on the wide Heath of Penenden to witness the discussion of his pleas, he had commanded those who were selected and chosen to testify on behalf of the county to meet in the speech-house of Canterbury, the election of knights of the shire would now at this day be made by a close corporation.'

This conclusion somewhat exceeds the premisses; but it cannot be doubted that the practice of holding assemblies in unenclosed places must have had a very material influence upon the Saxon constitution and principles of government. That influence has continued to our own times. What part of our present political system is so thoroughly democratic as the nomination of members of Parliament at the hustings in the presence of a promiscuous gathering of the people? For centuries the parliamentary elections were determined by show of hands at these meetings, which were open to all comers.* In the assemblage on the

so called of this consultation: for Runan in the Saxon speache (which was not then so muche forgotten) signifies to consulte or talke together, which word is not yet cleane gone, for we say that Men *rounde* together when they whisper or talke softelye one to another.'—Lambarde's 'Alphabetical Description of the Chief Places in England and Wales.' Lond. 1730, 4to. p. 304.

Rún, 1. A letter, magical character, mystery. 2. Council, meditation, consultation, conversation.—Bosworth's 'Anglo-Saxon Dictionary.'

Lambarde, it will be seen, conjectures that Runemede was so called from the consultation between John and the Barons. Matthew Paris, on the contrary, states that the name was received from more antient councils. We do not know his authority for this statement, and therefore cannot determine with precision its historical value. But at all events, it is not probable that a name so purely Saxon as Runemede was given after the Conquest; and the Convention between John and the Barons conclusively shows that when it was signed, the name of Runemede was well known. The articles are dated 'in the meadow which is called Runingmed,' 'Datum per manum nostram in prato quod vocatur Runingmed.'

* I consider this point very material in an investigation of the character of

hill-side or unenclosed common or open heath scrutiny of voters would have been impracticable. The Anglo-Saxon local courts were equally accessible; and we have the direct evidence of coeval documents, that they were in fact attended by large numbers of persons of all ranks, who expressed their opinions upon the business submitted to their consideration. This conclusion is of the utmost importance in determining the nature of the county court when it became the arena of parliamentary elections.

the antient suffrage. What we now call 'nominations' were formerly the elections, and are still so regarded in law. Until the time of Henry VI. there was no scrutiny of votes; and long after that period election by the 'view' or 'show of hands' was common. It will be shown hereafter that the right to a poll of the voters was not thoroughly established until the time of the Stuarts.

CHAPTER IV.

COUNTY COURTS AFTER THE CONQUEST.

General administration of justice, 39.—*Manorial courts,* 39.—*Sheriff's turn,* 40.—*Coroners' Presentments,* 40.—*Freeholders not the only suitors,* 42.—*County courts held periodically,* 42.—*Nature of a general summons,* 44.—*Persons exempt from attendance,* 45.—*Juries,* 46.—*Coroners elected,* 46.—*Business of county court,* 47.—*The court held commonly in an edifice,* 48.—*Evidence that villans were present,* 49.

The general character of the judicature under the Norman and Plantagenet kings was as follows:—There was, in the first place, a multitude of courts of lords of manors and other great personages all over the country, which took cognisance, sometimes only of minor causes, sometimes of the highest crimes. But these peculiar courts, numerous as they were, must be considered exceptions to the ordinary course of justice, which was regularly administered in the courts of Hundreds, the sheriff's Turn, the county court, and, above all, by the king's justices, the judges in eyre, or the judges of assize.

Courts of peculiar jurisdiction were not unknown in the Saxon era, but they were enormously multiplied after the Conquest, and must have had a very great effect upon the social condition of the people. The ordinary manorial courts had jurisdiction merely of questions arising between the tenants of the manors. But besides these there were numerous isolated tribunals, in which either by charter or prescription or, as was sometimes the case, by unwarranted assumption, the barons and others had cognisance of crimes and misdemeanours, and not unfrequently of capital offences. The number of these local jurisdictions is shown by the circumstance that the Articles of Inquiry, the answers to which are recorded in the 'Hundred Rolls,' direct, among other things, a return of particulars respecting the persons who claim to hold pleas and to enjoy royal franchises, such as the right of gallows, and other prerogatives of the Crown. From almost every page of the 'Hundred Rolls' it appears that the gallows were set up in thousands of places throughout the country, and that the owners of estates claimed the right to use them.*

* Of the arbitrary power frequently assumed by local potentates, there are some remarkable instances in the 'Hundred Rolls.' Thus in the return for the Hundred of Bradeley, Gloucestershire, the following statement occurs (vol.

In contradistinction to these peculiar or privileged courts, the regular tribunals—that is, those of hundreds and counties, and of the king's justices in eyre or the judges of assize—were *royal courts*, because they belonged to the ordinary administration of justice. The law distinguished between the suit or service which a man owed to the peculiar jurisdictions, and that due to the king's tribunals. '*Suit real*,' or '*suit royal*,' is that 'which by common law is due to the sheriff's turn or leet, which are courts royal or king's courts; and to these courts all men of the age of twelve years or above shall be compelled to come in person to learn and know the laws.' This suit is due, not for their lands which they have or hold, but only *ratione del resiancie del person*, by reason of their dwelling within the hundred. Suit to the county court is also a suit royal, and due within the county. But suit-service, such as is owed in a baronial court, is by reason of tenure.*

We have here the distinct authority of two old text writers of deservedly high repute in favour of the position that suitors in the county court were not *freeholders* merely, and that the obligation of attendance there depended on resiancy or residence, and not on the tenure of land. The counter theory that such suitors were exclusively freeholders has been frequently maintained by later writers, though upon what authority I have been unable to discover. I believe this theory, and the inference from it that knights of the shire were originally elected by freeholders only, are without any real foundation. The attention of the reader is particularly directed to the authorities hereafter cited with reference to this controverted point.

Britton, whose treatise of English law was written in the reign of Edward I., and purports to be put forth by that king's authority and in his name, thus speaks of the jurisdiction of the county courts:—'In counties we have a two-fold court: one of the pleas of our peace, which is held by our coroners and the suitors, and of which the coroners only have record. We have also a court of the nature of a court-baron, in which the

p. 179):—'John Essewy, bailiff of Stoutr', held a certain court at Stoutr', and when certain of the suitors opposed him in the said court, he caused the doors to be shut, and by armed men whom he privily procured, slew three of the suitors, namely Ranulf Richer, John Freeman, and Thomas de la More.'

On the same page, in the return for the Hundred of Derhurst, it is stated that Gilbert and Walter Scot, bailiffs of the Earl of Gloucester, 'lately took a certain man with five eggs, stolen as they alleged, and caused him to be decapitated without trial.'

* 'Dalton on Sheriff,' p. 45. Finch, book ii. chap. 6.

suitors are judges, and have no record out of their court except by consent of the parties. . . . We have also one court there, with the sheriff of the county for our justice, whensoever we command our sheriffs by our writs that for the purposes of justice they cause any plaint to be brought before them, whereof the sheriff with the suitors bears record' (et dunt le viscounte ove les sutiers portent record).*

In another chapter† he says: 'In county courts also before our sheriffs and the suitors, and in hundred courts, and in courts of freemen (en courtz des fraunces hommes), pleas of trespass and debt may be pleaded without our writs, simply by gage and pledge, provided that neither the goods taken away in trespass nor the debt demanded exceed forty shillings, except trespass of mayhems and wounds and imprisonment, and batteries committed against our peace. For we will that no one have cognisance or jurisdiction to hold pleas of such complaints, nor other trespasses for goods carried away beyond the value of forty shillings, or of debts exceeding the same sum, without our writs, which writs shall sometimes be pleaded in the county courts and in franchises, unless removed therefrom by our precept, and sometimes elsewhere before our justices. And we will that great trespasses be pleaded before ourselves.'

From the same author it appears that the coroners had a very important and extensive jurisdiction in enrolling criminal accusations which were to be ultimately determined before the justices in eyre. In every county there was to be a coroner who was elected by the commons of the county, and it was his duty not merely to make inquests in cases of death, but also 'we will that when any felony or misadventure has happened, or if treasure be found underground and wickedly concealed, and in case of rape of women, or the breaking of our prison, or of a man wounded near to death, or of any other accident (aventure) happening, that the coroner do speedily, as soon as he is informed of it, give notice to the sheriff and the bailiff of the place that at a certain day he cause to appear before him at the place where the accident happened the four adjacent vills, and others if need be, whereby he may enquire of the truth of the casualty. And when he is come let him swear the vills upon the Holy Evangelists that they will speak the truth of such articles as he shall demand of them on our behalf.'‡

The coroner was required 'to make enrolments of appeals or accusations of felonies, of the death of a man;' and also

* Britton, liv. i. ch. 28. † *Ibid.* liv. i. ch. 29. ‡ Liv. i. chap. 2.

'to do the like in appeals of rape, robbery, larceny, and in appeals of every kind of felony.' These were subsequently heard before the justices in eyre.

The foregoing extracts from Britton afford valuable information respecting the nature of the county court in his day, and the position which it occupied with reference to the general administration of justice. Everything written on this subject by authors of the time of Edward I., or shortly before or after that time, deserves careful consideration, because that is the period in which persons attending the county courts were first constituted electors of knights of the shire.

The treatise which bears the name of Fleta is shown by Seldon* to have been compiled in the reign of Edward I. Fleta expressly states that the suitors at the sheriffs' turns and views of frankpledge were not only the free*holders*, but also the *free men*. He says that the county court was to be held from month to month; the sheriff's turn was to be held in each hundred twice a year—once after Easter and once after Michaelmas. The articles of enquiry at the view of frankpledge, which was taken at the Michaelmas turn, included enquiries respecting felonies, misdemeanours, nuisances, concealments of crown rights, &c. The persons whose duty it was to make these enquiries were the capital pledges† (capitales plegii), or heads of decennæ, who among other things discharged functions similar to those which in later times devolved upon grand juries. 'When the capital pledges have answered distinctly to these articles, reliance is to be placed not merely on their verdict, but also on the verdict and oath of twelve freemen, who upon the aforesaid indictments and concealments shall be charged to declare the truth. Nor can they be excused from that oath by any exemption except the king's writ, for on that day no exemption is allowed, because it is granted to all who have the liberty of frankpledge that their free tenants *or other free men suitors to their views* shall make oath in the turns and views, notwithstanding any royal mandate, or shall be heavily amerced for contempt, because that is the king's day and was ordained in favour of the peace.' From this passage it appears that the duty of acting as jurymen at the turns and frankpledges was universally incumbent on all free men, and that any neglect of that duty was punishable by fine. The turn was, as Fleta emphatically styles it, the

* 'Ad Fletam Dissertatio,' chap. 10.

† The 'capitales plegii' were the head men of each decenna, and were also called 'head borows,' or 'borsholders' (borg, the decennal pledge, and alder, elder, or chief).—Spelman, *Glossarium, in voce Borsholder.*

king's day—a general review by the men of the hundred of offences against the peace of their community. Fleta states further, that the persons presented as offenders by this jury are to be committed to custody, except where the alleged offences are bailable, in which case they are to be released on bail.

From some curious entries which I have found in the 'Hundred Rolls,' and which may be conveniently inserted here, it would appear that the capital pledges acted as constables. In the return for the Hundred of Anesford, in the county of Sussex,* the following complaint of contempt of the sheriff's authority is recorded: 'Whereas a certain Roger le Whyte taken by the king's writ at Cudelawe for a certain robbery was delivered by the sheriff to the capital pledge of Cudelawe and four other men to be taken to Gudeford to be there imprisoned; Walter Sewale and several others by the command of the steward of Arundell took the said capital pledge with the said four men so conveying the said Roger and imprisoned them in the castle of Arundell for eleven days until each of them gave the same steward two shillings for his release.'† The following return for the Hundred of Duddestan, Gloucestershire, is of the same character. 'The headborow (decennarius) of Abilade and his decenna were conducting a certain Walter de la Hoke to the castle of Gloucester to prison and the burgesses of Gloucester took away the said prisoner from them by force and W. de Bocking undersheriff took from the said headborow and decenna one marc.'‡

The antient statutes contain various provisions respecting county courts, and are of course the most authentic sources of information on the subject. Under the Saxons and by the laws compiled in the reign of the Conqueror (as we have seen, ante, p. 11), shire motes were held twice a year. But besides these, there were lesser assemblies held monthly. By the laws of Edward the Elder (sec. 11) 'I will that each reeve have a gemot always once in four weeks.' The Magna Charta of John does not refer to the times when county courts are to be held, but the Magna Charta of 9 Henry III. provides (c. 24) that the

* 'Hundred Rolls,' vol. ii. p. 214.

† The steward and bailiffs of Arundell Castle were evidently not in favour among the neighbouring population. One of the complaints in this return is that, 'when the sheriff holds his turn, the said steward will not allow any secrets to be told the sheriff apart from him.' Another is, that 'when any capital pledge comes before the bailiff with his cap on (indutus capucio), he immediately amerces him.'

‡ 'Hundred Rolls,' vol. i. p. 181, col. 1.

county court shall be held from month to month, except where a greater interval is customary; and the Sheriff's turn in every hundred at Easter and Michaelmas. At the Michaelmas turn the view of frankpledge is to be held.

Additional light is thrown on this enactment by one of the documents printed in the first volume of the 'Authentic Edition of the Statutes,' and, more recently, in the 'Royal and other Historical Letters illustrative of the reign of Henry III.'* This document is a writ from the crown to the sheriff of Lincoln, and bears date 18 Henry III. (A.D. 1234). A translation of the principal contents of this little known record will be acceptable on account of its importance with reference to our subject. 'The king to the sheriff of Lincoln greeting. Because we have heard that you and your bailiffs and also bailiffs of others who have hundreds in your county, do not understand in what manner the hundred and wapentake ought to be held in your county, after that we have granted to all of our kingdom the liberties contained in our charters which we did while we were under age; we have caused the same charter to be lately read in the presence† of the Lord of Canterbury and the greater and more worthy (*sanioris*) part of all bishops, earls and barons of our whole realm, in order that in their presence and by them, the clause contained in our charter of liberties might be expounded; viz. that no sheriff or bailiff should make his turn through hundreds except twice in the year and only in the proper and accustomed place namely once after Easter and again after Michaelmas, without occasion.' The writ goes on to direct, in accordance with the advice of this council, 'That between the said two turns, there shall be held the hundred and wapentake courts and also the courts of great men (magnates) — every three weeks, where formerly they were held once a fortnight. So, however, that at such hundreds, wapentakes, and court there shall not be a *general summons* as at the said turns; but at those hundreds, wapentakes and courts shall assemble the complainants and their opponents and those who owe suit; by whom let the pleas be held and judgments given, unless it so happen that at those hundreds and wapentakes inquisition should be made of pleas of the crown; as of the death of man, of treasure trove,

* Edited by the Rev. Walter W. Shirley, and published by the authority of the Lords of the Treasury. 8vo. 1862. Vol. i. p. 450.

† 'A Colloquium met at Westminster April 1234; the Archbishop of Canterbury and other prelates and barons being present. The Archbishop threatened to excommunicate the king unless he altered his courses. The king assented to their demands.'—Parry's *Parliaments*, p. 30.

or the like. At which inquiries let there assemble with the said suitors the four nearest villates, namely all of those vills who are necessary to make those inquisitions.'

By the provisions of Merton made shortly after this regulation, namely 20 Henry III., it was provided (c. 10) that every free man* (liber homo) who owed suit to the county court trithing, hundred, or wapentake, or to the court of his lord, might freely appoint his attorney to make those suits for him. This law had an important effect on the constitution of the local courts. By virtue of it, lords of manors, as will be hereafter seen, very commonly did suit in the county court by their stewards or other agents.

The provisions of Oxford, made in the year 1258 (42 Hen. III.), show that at a very early date villans were admitted to an important share in the administration of justice. One of these provisions, cited in Fleta (lib. i. c. 18), regulated the inquisitions to be taken periodically respecting murders, felonies, treasure trove, and other matters; and directed that the presentments, which were to be subsequently delivered to the justices in eyre, should be sealed by each of the jurors, and enrolled by the coroners. 'And if in the said vills, half vills, and hamlets, any deficiency be found whereby the inquisitions cannot be taken sufficiently by free men only, then let there be joined to them some of the more discreet and lawful *villans* having seals' (de discretioribus et legalioribus villanis sigilla habentibus).

The duty of making these inquisitions and of performing the offices required in the sheriffs' turns devolved upon the middle and lower classes of the laity. The Statute of Marleberge, or Marlborough (52 Hen. III. A.D. 1267), exempts prelates, lords, and 'religious' men and women from the necessity of attending sheriffs' turns, unless their presence was required there for any cause specially (ch. 10). Another section of this statute relates to the special exemptions which individuals obtained by charter from being empanelled in assizes, juries, and inquests. With respect to such persons it is enacted, 'That if their oaths be so requisite that without them justice cannot be administered . . . they shall be compelled to swear, saving to them at another time their foresaid liberty and exemption.' The 'Hundred Rolls' contain numerous references to exemptions by charter from attendance at the county courts.

* Every 'free *man*'—not free tenant, be it observed. The phrase 'liber homo' is evidently used in this Act of Parliament as a *nomen generalissimum*, to include the whole class of suitors in the county court.

The Statute of Marleberge regulates in an important particular the general periodical inquisitions of sheriffs and coroners, to which reference has been frequently made in the preceding pages. The legal age for entering the decenna was twelve years, and all persons in the decenna were, as we have seen, generally liable to attend these inquisitions. But the obligation was so far relaxed that, if a sufficient number to make up the juries attended, the rest were excused; with this proviso, that the exemption did not extend to inquests for the death of man. The statute provides (sec. 24) that 'The justices in eyre from henceforth shall not, on their circuit, amerce villates (*villatas*),* because all being twelve years old come not before the sheriffs and coroners to make inquiry of robberies, burnings of houses, and other things pertaining to the crown; so that there come out of those villates sufficient men by whom such inquests may be fully made. Except inquests to be made of the death of men, where all of twelve years ought to come unless they have reasonable cause of absence.'

In the next reign several additional provisions were made respecting the constitution of juries. By 3 Ed. I. c. 11, the inquests taken by the sheriff in cases of homicide were to be taken by *lawful men* chosen by oath, of whom two shall be chivalers at least (prodes hommes esluz per serement dount les ii serrent chivalers † a meins). By 21 Ed. I. stat. 1, it was enacted, 'that within the county before justices of our lord the king or other ministers assigned to the taking of any such inquests, juries or other recognisances, none shall be empanelled except he have land or tenements to the yearly value of forty shillings (nisi habeat terras vel ten' ad valentiam quadraginta solidorum per annum ad minus).' In some printed collections of the statutes at large this statute is entitled 'What freehold lands jurors must have,' but there is not a word about freeholds either in this, or, so far as I have been able to discover, in any other antient enactment respecting the qualifications of jurors.

The coroners were chosen in full county court. By 18 Ed. III. c. 6, affirming the old law on the subject, 'all coroners of the counties shall be chosen in full county court by the commons of

* 'Villata,' the community or population of a vill.—*Spelman*, in *Voce Villata.*

† The word 'chivaler,' and the equivalent Latin word 'miles,' were used in the middle ages with great latitude to denote persons of very different grades. Sir Henry Ellis, in his Introduction to Domesday (vol. i. p. 58), has shown that the appellation sometimes applied to soldiers merely, sometimes to persons of higher rank; and he gives various instances from Domesday in which milites were classed with inferior orders of tenantry.

the same counties (par les communes de meismes les contees), of the most meet and most lawful people that shall be found in the said counties to execute the said office.' When chosen, they were required to take oath in the full county court before the sheriff that they would duly execute their office.*

In very early Saxon times the sheriffs appear to have been elected by the people in full county court.† The statute 28 Ed. I. stat. 3, cap. 8, has the following clause:—'The king hath granted unto his people that they shall have election of their sheriffs in every shire (where the shrievalty is not in fee) if they list.' The exception in this enactment relates to one or two counties in which the shrievalty was a freehold or hereditary office. In other places this statute gave or restored to the people the power of choosing sheriffs. But in 9 Ed. II. this popular election was abolished by the 'statute of sheriffs,' and the choice of those officers was assigned to the chancellor, treasurer, barons of the exchequer, and justices.

The business done in the county court was of an exceedingly miscellaneous character. We have already seen that it had cognisance of debts and demands not exceeding forty shillings, and of petty assaults and trespasses. Proclamations of outlawry were made in this court. Fugitive villans might be recovered by process there, except when they pleaded that they were freemen, in which case the cause was remitted to the king's justices.‡ Titles to land might in certain cases be tried in the county court by 'writ of right.'§ For a long period after the establishment of parliaments, the practice prevailed of sending the statutes of each parliament to the sheriffs to be proclaimed in the county court. In that assembly not only were knights of the shire elected, but also many local officers. For example, in several instances, as will be shown in the next chapter, the sheriffs were directed to convene the assemblies of their counties

* Britton, chap. i. sec. 2.

† Mr. Kemble ('Saxons in England,' vol. ii. p. 165) thinks the office of sheriff was in the earliest periods elective, but that subsequently 'the scirgerefa was nominated by the king with or without the acceptance of the county court.'

There is a passage in the Charter of John (nos non faciemus justiciarios constabularios vicecomites vel ballivos nisi de talibus qui sciant legem regni et eam bene velint observare) which favours the idea that in his reign sheriffs were appointed by the Crown. Probably the usage was not uniform. In the Hundred Rolls (temp. Ed. I. vol. i. p. 56) it is said that King John, by a charter, gave to the county of Cornwall the right of electing its sheriffs, but that the right had been subsequently usurped by Richard, Earl of Cornwall.

‡ Glanville, 'De Legibus,' lib. v. chap. 1.

§ Bracton, lib. v. chap. 3.

to elect assessors and collectors of parliamentary grants. Again, by the Act 9 Ed. II. stat. 2, it was directed that the execution of sheriffs' writs should be made by 'hundredors' known and sworn in the full county court. In the same place were assessed the wages of knights of the shire.* The practice in this respect began with the very commencement of parliaments. The method of assessing these wages is described in detail in the statute 23 Hen. VI. c. 10, which directs the sheriff to make open proclamation that the coroners, chief constables, bailiffs, and '*all others who wish to be present at the assessment of the wages of the knights of the shire*' shall be present at the next county court for the purpose. This passage, as we shall hereafter more particularly show, goes far to prove that the county court was open to all who chose to attend it.

It is not unimportant to observe that the Saxon practice of holding shire-motes in the open air was not generally followed in the thirteenth century. At that period meetings for the ordinary transaction of business seem to have been held in buildings appropriated for the purpose, and only when the attendance was unusually large the county court was held in the open air. One or two very early instances of edifices appropriated to the court are extant. Thus in the 'Hundred Rolls' for the county of Norfolk there is a curious entry that the servants of the sheriff 'demolished, took away, and sold the houses of Simon le Waleys de Atlebrigg, and converted his dwelling into a building in which the pleas of the county are held.'† At Oxford, in the reign of Edward I., the county court was held at the manor-house there. This appears by a writ to the following effect:—'The king to the Sheriff of Oxford greeting. We command you that you deliver to Francescus Accursius or his order, on production of this writ, the Manor of Oxford to dwell in, with his wife and household, during our pleasure. But we will not that you on account of this fail to

* There is a curious illustration of the way in which this business was managed in the record (Madox, 'Firma Burgi,' p. 101) of a suit by William de Goldington against the sheriff of Westmoreland in the Exchequer in 2 Edward II. The plaintiff claims ten pounds for his wages as knight of the shire in two parliaments. The sheriff answers, that in the next county court, after the receipt of the writ for these wages, 'he caused it to be determined what and how much the said William should have for his said expenses. After a discussion had thereupon between the said William and the men of the community of the said county, the same men granted him forty shillings for his expenses, with which the said William at that time held himself well contented.' The plaintiff denies the compact, and demands a jury.

† 'Hundred Rolls,' p. 528.

hold the county court in the hall of the said manor on the appointed days.'*

There are abundant proofs in the 'Hundred Rolls' that villans and other classes of tenants besides freeholders were required to attend the county courts, the sheriffs' turns, and the courts of the justices in eyre, in the reigns of Henry III. and Edward I. This point has been much contested, and it will therefore be desirable to state rather minutely some of the evidence with reference to it which is to be found in those rolls.

These documents contain returns to inquisitions made in various counties respecting the rights of the crown, the administration of justice, and kindred subjects. It was a function of the justices in eyre to inquire respecting escheats, usurpations of rights of the crown, oppressions and frauds of the king's officers, and unlawful assumptions of jurisdiction. The justices in eyre delivered in charge to a jury of twelve men of every hundred certain articles of inquiry called 'Capitula Itineris.'† These were not always the same, but varied from time to time. The 'Annales de Burton' give the form of the inquisitions in various counties in 1254, and again in 1255 (39 Henry III.). The latter are apparently those to which returns are given in the 'Hundred Rolls' of that date. There are extant on the patent rolls writs (39 Henry III.) addressed to the officers of various counties, announcing that the king had assigned certain justices to take the inquisitions, and requiring that due assistance should be rendered to them for the purpose.‡

* Selden's 'Dissertatio ad Fletam,' p. 526.

† Bracton, fol. 116. Fleta, lib. i. chap. 19. Both Bracton and Fleta give a large number of such articles of inquiry.

‡ This writ, which does not appear to have been hitherto printed, is in the Record Office, and is as follows:—

Pat. 39, H. 3. m. 9*d*.

De inquisitionibus faciendis { Rex omnibus Ballivis et fidelibus suis in comitatibus Notingh' Derb' Eborum Northumbr' Cumberl' Westmerl' et Lancastr' salutem. Sciatis quod assignavimus dilectos et fideles nostros Henricum de Bathonia et Ricardum de Shireburn' ad inquisitiones faciendas de juribus et libertatibus nostris in comitatibus prædictis et qui sectas debent ad comitatus illos et ad curias nostras in eisdem comitatibus et qui subtraxerunt se ab hujusmodi sectis faciendis sine waranto et ad inquirendum similiter de custodiis castrorum nostrorum et de omnibus ad castra illa pertinentibus et de statu boscorum parcorum haiarum et forestarum nostrarum in comitatibus prædictis. Et de omnibus aliis quæ utilitati nostræ et regni nostri magis viderint expedire. Et ad extendendum prædictos comitatus et omnia maneria et dominica nostra in eisdem comitatibus et omnia proficua ad castra

Of the inquisitions of the reign of Henry III. only a few are preserved. The great part of the 'Hundred Rolls' is occupied by returns of the next reign—that of Edward I.—taken, not by the judges in eyre, but by special commissioners appointed in the second and seventh years of that reign respectively. The 'Patent Rolls' give thirty-five articles of inquiry by the commissioners appointed 2 Edward I.

By a laborious examination of these documents I have been able to discover much valuable information respecting the constitution of the antient shire courts and other tribunals. One of the principal articles of inquiry by the commission of 2 Edward I. was 'respecting antient suits, customs, services, and other things withheld from our lord the king and his ancestors, who have withheld them, and from what date; and who have appropriated to themselves such suits, customs, services, and other things belonging and customarily due to our lord the king, and from what date, and by what warrant.' Another article is 'respecting those also who have franchises granted to them by the kings of England, and use them otherwise than they ought to do, and from what date, and in what manner.'

The replies frequently show what were esteemed to be the ordinary obligations of attendance in the courts of justice. The following are entries with respect to the attendance of villans:—

Norfolk, Hundred de Lodningges: 'The Abbot of Langele withholds all his tenants, *as well free as villans* (omnes tenentes suos tam liberos quam villanos), from the leet of our lord the king in Carleton, from the sheriff's turn, and even from coming before the king's justices in eyre.' ('Hund. Rolls,' vol. i. p. 541, col. 2.)

Norfolk, Henstede: 'The king's earl marshal, lately deceased, withheld certain suits due from the tenements of certain of his *villans* to the said hundred every three weeks.' (*Ib.* p. 536, col. 1.)

Norfolk, Happinge: Warinus de Monte Canis' withheld 'all his tenants, *as well free as others*, from the sheriff's turn, and so does now William his son.' (*Ib.* p. 528, col. 2.)

Norfolk, Smethedon: 'The *villans* of the Countess of Arundell in Snetisham hold certain land from which suit is

prædicta pertinentia. Et ideo vobis mandamus in fide qua nobis tenemini quod prædictis fidelibus nostris cum ab eis requisiti fueritis diligenter intendatis et assistatis ad expeditionem omnium prædictorum prout vobis plenius injunxerint ex parte nostra Ita quod diligentiam vestram debeamus merito commendare. In cujus etc. Teste Rege apud Wodestok' xxij. die Junij [A.D. 1255].

Similar letters patent for other counties are enrolled concurrently.

due to that hundred, but that suit is omitted because the countess, to whom the hundred belongs, will not distrain the *villans* to make that suit.' (*Ib.* p. 522, col. 2.)

Gloucestershire, Kiftesgate: 'The Sheriff of Gloucestershire and Walter de Bockyng' required four attendances at the hundred of Kiftesgate, where they were never wont nor ought to come except twice a year. And he hath amerced *as well freemen as customary tenants* (tam liberos quam consuetos), if they came not at each of his summonses.' (*Ib.* p. 173, col. 2.)

Lincolnshire, Manle: 'The Abbot de Rupe produces a charter of King Richard, which witnesseth that the aforesaid land is quit of all custom. And the twelve [jurors] testify that the said land hath been quit of all custom since the making of the said charter, except that the tenants of the abbot, *as well free as villans*, come to the turn of the bailiwick, and also to make presentments.' (*Ib.* p. 339, col. 2, in notis.)

Norfolk, Strepham, &c.: 'The *villans* of Lord Warinus de Montecaniso were wont to give fourpence a year to the suit of the hundred of our lord the king, and are withdrawn from the time when our lord the king granted his charter to Lord Warinus, father of the said William.' (*Ib.* p. 470, col. 1.) In explanation of this entry it should be noticed that the sheriffs were entitled to remuneration for holding the turn. By a charter* of 2 Henry III. A.D. 1218, it was provided that the sheriff should 'be content with that which the sheriff was wont to have for taking the view in the time of King Henry our grandfather.'

Nottingham, Bingham: The land of the Prior of Thorgarton, 'and the tenants of the same, *as well free as others*, were wont to be rateable (geldabiles) generally, and to make suit to the wapentake of Bingham.' (Vol. ii. p. 318, col. 1.) There is an entry to the like effect with respect to this place, ib. p. 27, col. 1.

Salop, Munselawe: John de Stepelton 'holds Feldhamton in *villenage*, and does not make suit to the county or hundred, nor give stretwarde and motfeh.'† This is from the 'Hundred Rolls' of Henry III. (vol. i. p. 71, col. 1), and is a return to the article respecting rights and franchises withheld from the

* 'Statutes of the Realm' (authentic edition), vol. i. p. 18.

† 'Stretwarde' is several times mentioned in the 'Collection of Saxon Laws.' In the laws of William the Conqueror the word is translated *de viarum custodiis*—the keeping of highways. 'Of every hide in the hundred four men shall be found for stretwarde from Michaelmas to Martinmas.' 'Motfeh' possibly means the fee of the mōt or folcmot. In the 'Hundred Rolls' there is an apparently analogous word: 'letefe'—'ij d. annui redd' qui vocatur letefe' quod Rex habere consuevit.' Vol. i. p. 516.

crown. John de Stepelton is returned as a defaulter for not making suit to the county court in respect of the land which he holds in villenage. If such land were always exempt from such suits it would obviously have been superfluous to notice his non-attendance at the county court.

It is impossible to resist the inference from the passages just cited, that in parts of the kingdom widely distant from each other villans were expected to take a share with their neighbours in the ordinary administration of justice. It must be remembered also that the returns were made under the superintendence of commissioners who were versed in the law and would not have entered villans as defaulters if the law exempted them.

We now turn to a different class of entries in the 'Hundred Rolls,' those respecting the quota or complement of men sent from different districts to the different courts of justice. From a passage in Britton already cited, it appears that *four men and a prepositus*, or foreman, for every vill were bound to attend the justices in eyre. One of the articles of inquiry made by the justices on their circuits was respecting defaulters in this respect, and it is obvious from the form of the inquiry that the four men and the prepositus were *not* free tenants.* The vills which did not duly send their contingent of men were punishable by fine. Thus, the villate of Brewes in 13 Richard II. was fined half a mark 'because four men and a prepositus were not present before John Holt and his companions justices of our lord the king assigned for gaol-delivery.'†

A similar practice existed with reference to attendance at the sheriffs' turns. Of this, numerous instances might be cited from the 'Hundred Rolls,' but the following will suffice. Essex, Tendringes: 'Four villans and a prepositus of the homage of the villate of Appelford in Alesford were wont to come to the sheriff's turn' (vol. i. p. 163). Cambridgeshire, Witlisford: 'The freemen of Witlisford and four men and a prepositus were wont to come to the sheriff's turn' (*Ib.* p. 55).

Lastly, it appears that the four men of each vill had to

* 'Item si omnes libere tenentes et iiij homines et prepositi de singulis villis veniant ad summonicionem sicut precept' furint.'—*Hundred Rolls*, vol. ii. p. 67. 'De libere tenentibus et aliis hominibus utrum veniant ad sum' sicut preceptum est.'—*Ibid.* p. 64. A similar article of inquiry is given in the 'Annales de Burton' (published by authority of the Master of the Rolls), p. 331.

† Madox 'Firma Burgi,' p. 65. Half a marc seems to have been a common fine for such defaults. In the 'Hundred Rolls' of Edward I., vol. ii. p. 263, it is said that the whole of Berton paid half a marc 'pro defalta coram justic' itinerantibus.'

attend the county court to make presentments there. Thus, with reference to Newark, Nottinghamshire, it is returned that 'The presentments of the crown were made in the county court by the four nearest vills and by four men of each vill. If they do not all come, they are amerced in the county court, whereas they ought* to be amerced only before the justices itinerant, and so they have a double penalty' (vol. ii. p. 29).

It was part of the duty of the coroner to cause the presentments to be made in the county court of appeals or prosecutions, and articles of the crown, and of these the sheriff kept a counter roll. (Fleta, lib. i. c. 18.) The author expressly states that villans were to be included among the persons making these presentments if there were not a sufficient number of freemen for the purpose.

Attendance at the county court was, as was stated in a previous page, a suit royal due, not by reason of tenure of particular lands, but on account of residence of the persons liable in the district. Still, there is abundant evidence that particular lands were bound by custom or by the conditions on which they were originally granted to send suitors to the court. For example, in the following instance, it is quite apparent that obligation was regarded as one which attached locally to a particular place. Buckinghamshire, De-la-Mewe: Of four hydes of land in Merse in the feud of Neuport, the jurors say, 'we believe that it ought to make suit, because two hydes at Thorneberge which are of the same feud make suit' (vol. i. p. 28).

It is material to observe that the same classes of persons are constantly mentioned as liable to do suit both in the hundred and in the county. The evidence that villans were required to attend the hundred courts is copious, and therefore when we find that two kinds of service are regarded as due from the same persons, the inference arises that the villans did suit to the county court also. The following examples will sufficiently show the force of this argument. Hereford, Welbetr': 'The lord of the park (haya) of Hurn was wont to make suit to the county and hundred together with the men of the said vill' (1 'Hund. Rolls,' p. 186). Here the same persons are described as liable to do service in both kinds of courts. But the following passage is still stronger to the same effect. Cambridgeshire, Stanton: 'The *whole feud* (totum feodum)† owes one suit of the county

* By 52 Henry III. c. 18, amercement for default of common summons was to be by the justices itinerant only.

† Totum feodum debet j sectam comitatus et hundredi pontagium et auxilium vicecomitis per annum iij s. et pro visu franciplegii ij s. per annum pro

court and hundred, pontage and aid of the sheriff four shillings, and for the view of franckpledge two shillings, for which two shillings *all free tenants* of that feud, namely those who hold land, shall go twice a year to the sheriff's turn, and one *villan* of the homage of Ralph de Tounii and one *villan* of the homage of Robert de Caldamo similarly shall go to two turns for the whole feud, and all the rest holding or not holding land shall remain at home.'

This entry alone appears decisive of the controversy respecting attendance of villans in the county court. The passage cited shows that the suit to that court from this feudal territory was due from the whole of the inhabitants without distinction; but that the suit to the sheriff's turn was rendered by a limited number of them in the name of the rest, namely all the free tenants and two villans. It appears also from the context of this entry that there were in this feudal territory a large number both of free tenants and villans.

The rule as to attendance at the various courts differed in different places. Sometimes only part of the tenants of a manor, sometimes all the tenants, were bound to do suit. These diversities of practice were due to causes which, for the most part, are now unknown; but we know that many lords obtained by charter special immunities and exemptions for their tenants; and in other instances the like privileges may have been obtained by arrangement or gradual encroachment. The 'Hundred Rolls' in several places seem to draw a distinction between *general* suits and those of a more limited kind, which did not extend to the whole body of tenantry of particular localities. For instance, at Hertesmere, Cambridgeshire, 'Nicholas de Wynton has a certain holding in Mendlesham, for which he ought to make *two general suits* yearly to the county court, and one entire suit to the aforesaid hundred (duas generales sectas per annum ad comitatum et unam integram sectam ad predictum hundr,' vol. ii. p. 193). The same person is said to hold other land, 'which land owes two *general suits* to the county court, and an entire suit to the same hundred.' (*Ibid.*) In the Hundred of Resbrygge, in the same county, 'eight men of the homage of John le Butiler, in Stokes and Boxham, who ought to do suit in the said hundred, have withdrawn their suit to

quibus duobus s. omnes liberi tenentes istius feoudi scilicet qui terram tenent ibunt bis in anno ad turnos vicecomitis et unus villanus de homagio Radulfi de Tounii et unus villanus de homagio Roberti de Cadomo similiter ibunt ad duos turnos pro toto feoudo et omnes alii terram tenentes et non tenentes remanebunt ad domum.—*Hundred Rolls*, vol. ii. p. 461, col. 2.

two *general hundreds* annually' (vol. ii. p. 195). There are several other references in the same page to 'general hundreds.'

These expressions apparently relate to the cases in which all the tenants of particular places are liable to summons. In a preceding page of this chapter a writ of Henry III. has been cited, which directs that at ordinary hundred courts there shall not be a *general summons*, as at sheriffs' turns, but only the plaintiffs, defendants, and those by whom the pleas are to be tried. Bracton says, with reference to different kinds of summonses, that some are *general* and some are special. 'A general summons is that which affects a whole body (universitatem), as all of a county or all of any city, borough, or town on account of anything which concerns the whole body; as the general summons which is made before the eyre of justice and the like.'* The word 'generalis,' applied to suits and summonses, had therefore a technical meaning. Applying the meaning given by Bracton to such a passage as that just cited ('which land owes two general suits to the county court yearly'—(2 'Hundred Rolls,' p. 193), it follows that the whole body, or *universitas*, of tenants of that land were suitors to the county court.

In the following extracts from the 'Hundred Rolls' we have decisive evidence that the whole of the tenantry of various large estates were bound to attend the county courts.

Nottingham, Bersetelaw :—'The honor of the castle of Tychill† has two turns yearly of *all its tenants* within the wapentake of Bersetelaw, from the time of our lord King Henry, father of our lord the present king, who gave that franchise to our Lord Edward, his eldest son, and those two turns are worth 100 shillings yearly. Nevertheless the *tenants* of that honor answer with Bersetelaw of all things pertaining to the crown and to the *county court*, and before the justices. And also of the same wapentake, the soke of Dunham has two turns yearly of *all its tenants* . . . and *all the tenants* of that soke answer with Bersetelaw of all things touching the crown and the *county court* and before the justices. And also of the same wapentake the honor of Lancaster has two turns yearly of *all its tenants*, from the time when that barony fell into the hands of our lord King Henry . . . Nevertheless *all tenants* of that franchise answer with Bersetelaw of all things touching the crown, and to the *county court*, and before the justices. And of

* Bracton, lib. v. cap. 6.

† It appears by the context that the castle of Tychill, in the county of York, had territories in different counties and wapentakes, and the answer here is confined to the territory within the wapentake of Bersetelaw.

the same wapentake the Earl of Lincoln has two turns yearly of *all his tenants*, from what time we do not know, and by what title we do not know, and those two turns are worth half a mare, and nevertheless they answer with Bersetelaw of all things touching the crown and to the county court and before the justices.' (Vol. ii. p. 301, col. 2.)

Here is a distinct statement that the whole of the tenantry of four territories—those parts of the wapentake of Bersetelaw which belonged to the honor of Tychill, the soke or liberty of Dunham, the honor of Lancaster, and the estate of the Earl of Lincoln—had their own separate turns, but were liable with the rest of the wapentake to attend the county court.

Landowners availed themselves extensively of the law which permitted them to do suit by attorney. We find repeated instances of this kind in the 'Hundred Rolls.' For example, at Duthinton, in Salop, 'the lord of the isle is Ralph Pincerna, and he pays suit to the county and hundred by his steward' (Senescallum, vol. ii. p. 56, col. 2). In the same county Ralph de Butiler is lord of Wemme, and 'makes due suit by his steward to the county and hundred for the whole of his barony.' (*Ibid.* p. 58.) Many other instances of the same kind occur; but it is not to be inferred that the stewards of great baronies appeared on behalf of all their lord's tenants.

That the attendance of stewards and bailiffs of manors did not supersede that of the tenantry, is clearly shown by the following passage from Fleta. Referring to certain proceedings promoted in the county court for purposes of extortion, he says: 'If it be necessary to plead in the county court, there is danger that such stewards may be guides of the judgments of the court, as a herdsman's horn of a herd, and strive to oppose the person compelled to plead, and to obtain unjust judgments, since they can do this without risk of corporal or pecuniary punishment, because they are not suitors of the county; for although the county may be amerced for false judgment, that will be no hurt to themselves.'

He then goes on to refer to an enactment which is evidently the following (3 Ed. I. c. 33): 'It is provided that no sheriff shall suffer any barretors or maintainers of quarrels in their shires, neither stewards of great lords nor other, unless he be attorney for his lord, to make suit, nor to give judgments in the county courts, nor to pronounce the judgments, unless he be specially required and prayed by all the suitors and attorneys of suitors which shall be at the court.'

From this passage it is obvious that stewards of estates fre-

quently sat in the county court with others over whom they were apt to exercise a commanding influence—presumably the tenants of those estates.

In a few instances the names of villans attending the county court are specially given. In the list of the 'nativi' of the Prior of Ware, at Cherleton, Oxfordshire, occurs the name of William Wyd, who holds of the same prior a virgate of land, 'for which the said William owes suit to the court of the said prior every three weeks, and is bound to the prior to two general work days (precaria) in the autumn, with all his household, except himself and his wife, and the same William owes suit throughout the year to the fourth hundred and *fourth county court*' (vol. ii. p. 830). So in the list of 'villani,' at Seldeswelle, Oxfordshire, 'John the son of William of Seldeswelle holds two virgates of land for seven pence a year of the same Nicholas, and owes two attendances at the hundred of our lord the king at Poch, and to two *county courts* every year.' (*Id.* p. 837.)

Of the diversities of practice in different counties many instances have been noticed in the foregoing pages. The following is a final specimen. With reference to the hundred of East Grenstead, Sussex, it is stated that the barony of Aquila pays 'to the sheriff's aid 9*l.* 17*s.* 6*d.*, for which the baron and milites of the whole barony are quit of suit to the county court, except the *aldermen* of the hundreds who do suit for the hundred' (vol. i. p. 205). In another hundred, Rutherebrugg, of the same county, it is stated that there is a bedell who is called alderman, and that at one time he used to be 'elected by the *scottors* of the hundred.' The electors of these representatives in the county court must therefore have included villans, for persons of that condition certainly contributed to the scot of the county.

As to the suitors at the sheriffs' turns and before the justices in eyre, we have direct and repeated testimony that villans were included among such suitors. The suits to these tribunals and to the county courts are repeatedly mentioned in conjunction as if there were no difference between them; and it would require strong evidence to overcome the antecedent improbability that in the inferior court a higher qualification of jurors was required than was deemed necessary in the superior court. The county court in the time of Henry III. and Edward I. had only a very limited jurisdiction, relating to petty offences and suits involving disputes about small sums of money not exceeding forty shillings. The judges in eyre dealt with matters of life and death, and determined the rights of the crown and

claims to estates and property of the greatest value. We have abundant unimpeachable evidence that the jurors on these more important issues included men of the villan class. Is it not excessively improbable that in the inferior court of the county, and there alone, a superior class of jurors was required? At all events it would require strong proof to warrant such a conclusion. But not a particle of such evidence is known to exist. No writer appears to have been able to adduce from the antient authorities any evidence that the liability to do suit in the county court at the period in question was confined to freeholders. Those who affirm that proposition content themselves with unsupported assertions or the citation of authors later than the reign of Henry VI., when the constitution of county courts for electoral purposes was altered by statute.

Again, it is quite clear that during the Saxon period the shire mote was attended by the free population generally. The right of all freemen to attend that assembly is stated in the most general terms. If, then, a great change was made in this respect after the Conquest, some positive law would have been necessary to effect it. But in the numerous references to the county court in the great charters and enactments of the Norman and earlier Plantagenet kings, nothing of the kind occurs. On the contrary, those laws clearly show that the spirit and general character of the popular Saxon institutions were studiously respected.

These general considerations would, if there were no positive evidence one way or the other, render it highly probable that the attendance in the county court was an obligation extending to the whole free population. But there is also strong positive evidence to the same effect. We have seen several instances in the preceding pages in which particular vills, or the inhabitants of particular vills, are spoken of generally as suitors. The persons making presentments of the crown in the county court included villans. In one case we find it made a special matter of complaint against a tenant 'in villenage,' that he neglects to attend the county court. In other cases such suits are said to be due from a 'whole feud,' or from the 'tenants,' the 'men,' or 'all the tenants' of particular estates. The generality of these expressions is quite inconsistent with the restriction of the liability in question to one class of tenantry exclusively. The theory which favours that restriction is of modern origin, and those who support it do not cite any authorities in support of their opinion. After patient examination, I have not discovered any warrant for it in our laws or antient documents. On the contrary, the

evidence collected in this and the preceding chapter appears to amply justify the conclusion that the obligation of attendance in the county courts was not confined to freeholders, and that those tribunals were open assemblies to which the whole of the free population had right of access.

CHAPTER V.

THE ORIGIN OF PARLIAMENTS.*

If there be any date in early English history which above all others deserves to be implanted in the memory of Englishmen, it is the year 1265, the forty-ninth year of the reign of Henry the Third. Historians and antiquarians are agreed in referring to that epoch the earliest parliament of lords, knights, citizens, and burgesses. Before that time, indeed, there had been held many great councils of the nation, but none, so far as extant records show, in which the counties and boroughs of England were represented together.

In the reigns of William the Conqueror and his immediate successors councils were frequently convened, and were attended by the principal men of the kingdom—bishops, abbots, earls, and barons. According to the feudal polity, the free tenants of every lord were bound to attend the court of their superior, and by the same rule the king's immediate tenants were bound to attend his court. Thus, the regal councils immediately after the Conquest bore a resemblance to feudal courts; but they also bore an equally strong resemblance to the assemblies of great men under the Saxon kings. There seems no sufficient reason why we should consider either the Saxon Witenagemot

* In the perusal of this chapter it will be sometimes convenient to refer to the following table of dates of the accession of several of the kings after the Conquest:—

	A.D.		A.D.
William I.	1066	Edward I.	1272
William II.	1087	Edward II.	1307
Henry I.	1100	Edward III.	1326
Stephen	1135	Richard II.	1377
Henry II.	1154	Henry IV.	1399
Richard I.	1189	Henry V.	1412–3
John	1199	Henry VI.	1422
Henry III.	1216		

or the feudal court-baron as the sole prototype of councils summoned by William I. It has been assumed by some modern writers that these meetings were solely and essentially feudal. The only evidence on which this theory rests is the provision in the 'Constitutions of Clarendon,' to be noticed presently, requiring those ecclesiastics who were tenants of the crown to attend the judgments of the king's courts in respect of their baronies. But this obligation extended only to judicial proceedings, and would not involve their presence in consultations respecting affairs of state and the general government of the country. It is scarcely worth while to form any theory respecting William's motives in seeking the advice of the chief men of the kingdom. Probably he was influenced partly by the obvious prudence of such a cause, which has been common in all ages and kingdoms, and partly by respect for Saxon traditions, and especially for the example of Edward the Confessor, for whose memory he professed great respect.

The 'Report on the Dignity of a Peer' attributes the origin of national councils and parliaments after the Conquest exclusively to the feudal polity, and indefatigably pursues this theory to very minute consequences, some of which are, as will be shown hereafter, contrary to historical truth. The writers suppose our Norman forefathers to have been the slaves of a self-imposed system, and to have upheld it in season and out of season, and often at the expense of their own judgment and interests.

The councils convened by the Conqueror ordinarily at Easter, Whitsuntide, and Christmas acted rather in an administrative than in a legislative capacity. In one of them, held in the fourth year of his reign, he confirmed the 'Laws of King Edward the Confessor,' with some additions. But the chief business of the councils of William I., so far as we have now records of them, related to matters of executive government, such as the grant of local charters, and the decision of questions of title to land. The same observation applies to the reign of Rufus and several succeeding kings. By the 'Constitutions of Clarendon,' which relate to the subjection of the clergy to the secular power, and were adopted at a great council of bishops, abbots, earls, barons, and others at Clarendon, in the tenth year of Henry II. (A.D. 1164), it was provided that 'archbishops, bishops, and all rectors,* who are tenants in capite of the king, shall have their possessions of the king as a barony, and therefor

* This seems to be the proper translation of the word 'personæ' in the original text. See Spelman's 'Glossary,' in voc. Personæ.

shall be answerable to the king's justices and officers, and must observe and perform all royal rights, and customs, and like other barons, are bound to attend the judgments of the king's court until sentence of blood.'*

These 'Constitutions' were the result of a great struggle, in which the ecclesiastics, under the leading of Becket, claimed almost absolute immunity from civil burdens and secular government. The barons assembled at Clarendon assigned a very good reason for the obedience of the clergy to the authority of the state. They were allowed to enjoy the emoluments of large territorial possessions, and while they had the privileges of other barons, it was only reasonable that they should be subject to similar obligations. But the comparison between them and other classes of the king's feudatories is pressed too far when it is made the foundation of a theory that all the consultations which the sovereign held with the chief men of the state were regulated by feudal rules.†

Not until after the time of King John do we find evidence of representative government, that is, of numerous bodies actually appearing and answering in the national councils by their elected proxies or delegates. The theory above mentioned has been extended to these councils also, and supposes that they were convoked upon feudal principles, and that the persons assembled were regarded in the light of suitors doing service in a baronial court. This seems to be a seriously erroneous view. A clause in the Charter of John, to which reference is about to

* Archiepiscopi episcopi et universæ personæ regni qui de rege tenent in capite habeant possessiones suas de rege sicut baroniam et inde respondeant justitiariis et ministris regis et sequantur et faciant omnes rectitudines et consuetudines regias; et sicut cœteri barones debent interesse judiciis curiæ regis cum baronibus quousque perveniatur ad diminutionem membrorum, vel ad mortem.—Wilkins' 'Concilia,' vol. i. p. 436.

† Wilkins, in his 'Concilia Magnæ Britanniæ et Hiberniæ,' vol. i. p. 435, gives a transcript of these 'Constitutions.' They consist of sixteen articles, and are said to have been enacted on account of the 'dissensions and discords frequently arising between the clergy and the justices of our lord the king and the magnates of the king.'

Among other provisions, trials of clerics in the king's courts and of laymen in the ecclesiastical courts are regulated. Disputes between laics and clerics respecting advowsons, or respecting titles to lands of lay-fee, are to be tried in the secular courts. Bishops, abbots, and priors are to be elected with the assent of the king and the advice of persons appointed by him.

The 16th Article, considered in the text, requires that the clergy shall discharge the same obligations with respect to their lay-fees as other barons.

The mediæval monastic writers frequently dispraise the 'Constitutions of Clarendon.' Matthew Paris calls them 'a record of unjust customs, liberties, and dignities hateful to God.'

be made, provides that for certain purposes of making grants to the crown, the greater barons shall be summoned singly, and the other tenants of the crown collectively; and without doubt this provision contemplated a feudal assembly. But it was never, in that reign, acted upon. The representative councils actually convened in the time of John and in later times seem to have been of an essentially different kind, for the persons attending them did not appear as tenants in the court of their superior lord. How can we regard knights of shires elected in the county courts as in any sense the representatives of the tenants in chief of the town? The Report which has been frequently quoted suggests, with reference to an assembly called in the reign of Edward I., that knights of the shire were 'considered as standing in the place of such tenants in chief, and ranked therefore with the magnates.'* This is a very violent hypothesis. The writers of the Report themselves allow that all the county freeholders, at least, had the right of suffrage. But a vast majority of these freeholders were tenants of private persons and not of the crown. It is therefore directly contrary to the facts of the case to suppose that knights of the shire represented only, or even principally, those who held of the king in chief. Another hypothesis, to which the authority just quoted is obliged to resort in order to maintain the feudal theory of the origin of parliament, is that the represented boroughs were only those of royal domain. This supposition I shall, in the proper place, prove to be utterly contrary to the truth. Many of the represented boroughs were never in any sense the feudatory possessions of the crown.

A far more reasonable theory of the origin of parliaments is to suppose them analogous to the old witenagemote and other popular assemblies of Saxon times. The people were familiar by tradition with the practice of consulting with their sovereign upon affairs of common interest, and the only novelty consisted in their sending persons to represent their opinions. This plan of choosing a few to speak for the many would be recommended by its obvious convenience. Moreover, it was not absolutely new. The people were already conversant with a system of appearing in various assemblies by their attorneys or substitutes. Thus, as I have shown in a former chapter, it was the practice when Bracton wrote, and probably much earlier, for each vill to send four men and a prepositus to attend the justices in eyre; and in some places the same usage prevailed with reference to the sheriff's turn. So, again, in some districts,

* 'Report on the Dignity of a Peer,' vol. i. p. 191.

by antient usage, suitors to the county court were represented there by certain elected officers, called 'aldermanni.'* The election of knights of the shire was merely an application of the same contrivance to the greater councils summoned by the sovereign.

The first instance of a representative assembly is supposed to have been in 1213, the fifteenth year of King John.† Writs were addressed to the sheriff of each county commanding him to cause four discreet knights of the county to attend the king at Oxford to consult with him on the affairs of the kingdom.‡ No provision was made for the representation of boroughs.

This transaction took place two years before the Magna Charta, which was granted by the king at a great assembly of barons held at Runimede, in the 17th year of John (A.D. 1215). One of the provisions of this celebrated treaty provided that 'no scutage or aid shall be imposed in the kingdom except by *common council of the kingdom*, except to ransom the king's body, and to knight his eldest son, and to once marry his eldest daughter; and for this there shall be a reasonable aid. In like manner shall it be done respecting taillages and aids of the City of London, and of other cities which thereof have franchises.' §

The articles in which this passage occurs constituted the original treaty between John and the barons at Runimede, and are entitled: 'These are the articles which the barons require and the king concedes. (*Ista sunt capitula quæ barones petunt et dominus Rex concedit.*)' They are not in the form of a charter; but after they had been agreed upon and sealed, they were reduced to the form of a charter, of which exemplars were sent to every diocese in the kingdom.‖

* *Ante*, p. 57.

† 1 'Report on the Dignity of a Peer,' p. 60.

‡ Et quatuor discretos milites de comitatu tuo illuc venire facias ad nos ad eundem terminum ad loquendum nobiscum de negotiis regni nostri.

§ Ne scutagium vel auxilium ponatur in regno nisi per commune consilium regni, nisi ad corpus regis redimendum, et primogenitum filium militem faciendum, et filiam suam primogenitam semel maritandam, et ad hoc fiat rationabile auxilium. Simili modo fiat de taillagiis et auxiliis de civitate London' et de aliis civitatibus qui inde habent libertates; et ut civitas London' plenè habeat antiquas libertates et liberas consuetudines suas tam per aquas tam per terras.—Rymer's 'Fœdera' (ed. 1816). Vol. i. p. 130.

‖ Sir William Blackstone's Tracts, 'The Great Charter,' p. 297. The original of the Treaty at Runimede was at one time in the possession of Archbishop Laud; subsequently of Burnet, Bishop of Salisbury; afterwards of his son's executor, whose daughter sold it to Earl Stanhope, by whom it was presented to the British Museum.

Of the charter founded on these articles there are two exemplars in the

In these articles no stipulation is made respecting the form in which the 'common council' is to be held. The charter founded on the articles has, however, a supplementary provision on the subject;* 'and for holding the common council of the kingdom for assessing an aid otherwise than in the three cases aforesaid, or for assessing a scutage, we will cause to be summoned the archbishops, bishops, abbots, earls, and greater barons, *by our letters under seal*; and moreover we will cause to be summoned *in general by our sheriffs* and bailiffs, all those who hold of us *in capite*, at a certain day, to wit, at the expiration of forty days at least, and to a certain place; and in all letters of that summons we will express the cause of summons; and the summons being so made, the business shall proceed at the appointed day, according to the counsel of those who shall be present, although all the persons summoned do not attend.'

There are three points very noticeable in this clause. In the first place, the common council was to be convened for fiscal purposes only—the grant of certain aids to the crown. Secondly, the prelates, earls, and greater barons were to be summoned singly by royal writ, just as the members of the House of Lords are at this day. Who were distinguished as *greater* barons,† has not been clearly ascertained; probably the distinction was somewhat arbitrary, and depended on the will of the king. Thirdly, the tenants in chief were to receive a *collective* summons by the sheriffs and bailiffs.

British Museum; and Sir William Blackstone says there was another in the cathedral archives at Salisbury about the beginning of the eighteenth century, but when search was made for it in 1759 it could not be found. This copy was overlooked by the Record Commissioners in 1806. It was, however, visible in 1816, and is now carefully kept in the Muniment Room in Salisbury Cathedral. The Cathedral at Lincoln preserved its copy, of which a transcript is given in Rymer's 'Fœdera,' edition of 1816.

* Preterea volumus et concedimus quod omnes alie civitates et burgi et ville et portus habeant omnes libertates et liberas consuetudines suas. Et ad habendum commune consilium regni de auxilio assidendo aliter quam in tribus casibus predictis vel de scutagio assidendo summoneri faciemus archiepiscopos episcopos abbates comites et majores barones sigillatim per litteras nostras et preterea faciemus summoneri in generali per vicecomites et ballivos nostros omnes illos qui de nobis tenent in capite ad certum diem scilicet ad terminum quadraginta dierum ad minus et ad certum locum et in omnibus litteris illius summonitionis causam summonitionis exprimemus, et sic facta summonitione, negotium ad diem assignatum procedat secundum consilium illorum qui presentes fuerint quamvis non omnes summoniti venerint.—Rymer's 'Fœdera,' vol. i. p. 131.

† The word *barons* was antiently used in a very wide sense to denote persons of dignity. Thus we have barons of the Cinque Ports, Barons of the Exchequer, and even the citizens of London and other cities appear to have been sometimes called barons.—Brady on 'Boroughs,' cap. 6, p. 37.

John lived only a year and four months after the transactions at Runimede, and the greater part of that time was spent in contests with the barons. It is probable that there was never any convention during his reign in accordance with the provisions of Magna Charta just cited.*

It is very remarkable that in the great charter of the following reign, granted a few years later (9 Henry III.), the provision of John's charter about the common council was altogether omitted. That clause had reference to the assemblage of the king's tenants in chief only — a comparatively small class. These persons, who held land directly from the crown, were far outnumbered by other classes of tenantry whose landlords were private persons. The clause in some sense involved the idea of representative government. The tenants in chief were to be summoned by a general or collective summons, and the business was to proceed at the appointed time, notwithstanding the absence of some of the persons summoned. Thus the part was to represent the whole, the persons present were to decide for those who were absent.

But, from the omission of this clause in Henry the Third's charter, it is presumable that it was found unsuited for the times. By John's charter only royal tenants were invited to the king's councils. But in the next reign the principle of representation received a great development, much more nearly in accordance with the old traditions of popular government in the Saxon times. For example, in the year following the grant of Henry's charter (12 Henry III., A.D. 1226), a great council was held at Lincoln, which was attended by the representative knights of several counties, who accused the sheriffs of infractions of the charters. The manner in which these knights were chosen shows that they were regarded as representatives. At a previous assembly of magnates at Winchester, the crown had agreed to call the Lincoln assembly; and for that purpose writs were directed to the sheriffs of certain counties, directing the election of four knights of each county by the milites and good men (probi homines) thereof.† This assembly was called only for a special, though very important purpose, namely, to examine complaints against the sheriffs of violating the charters. The Lincoln assembly was not a complete parliament, in the modern sense, but shows a great advance beyond the narrow system of representation contemplated by John's charter. It is remarkable that the electors included all persons com-

* 1 'Report on the Dignity of a Peer,' p. 70.
† 1 'Report on the Dignity of a Peer,' p. 88.

prised under the wide designation *probi homines*, and that there is no mention of *free tenants*.

We pass over those transactions which do not mark distinct epochs in the development of parliamentary institutions. The council summoned in the 38th year of Henry III., A.D. 1254, is considered by an authority* which is at least laborious, the first instance appearing on any record now extant, of representatives assembled for the purpose of obtaining an aid. This assembly was convened for the purpose of making a grant to the crown. By the writs—which are extant †—the sheriffs of each county were commanded to cause to appear before the king's council, at Westminster, two legal and discreet knights, whom each county court was to elect for this purpose (legales et discretos milites quos iidem comitatus ad hoc elegerint) 'in the stead of the same, to provide what aid they are willing to pay us in so great necessity.'

In this instance no provision was made for the representation of boroughs. It is observable, that the knights were to be elected by the counties. The form of the writ shows that election must have been made in an ordinary county court, by all the persons who had a right to attend there.

The 'Provisions of Oxford,' enacted four years afterwards (A.D. 1258) in a parliament of prelates, earls, and nearly one hundred barons, introduce important innovations in the government. Among others, it was provided that, in every county, four discreet and legal knights (*discreti et legales milites*) should be chosen to inquire into grievances, and, upon oath, make a report on the same, which report, sealed with their own seal, and that of the county, was to be personally delivered by the sheriffs to the parliament, to be holden at Westminster, on the octaves of Michaelmas next ensuing.

Henry made several attempts to get rid of the obnoxious Provisions of Oxford. At a parliament held in the 48th year of his reign (A.D. 1264) the disputes between the king and the barons were, by common consent, referred to the King of France. At a parliament, held in the following February, the award of the King of France was read, annulling these Provisions, except what related to Magna Charta. Again, in a similar assembly in March, where the Earl of Leicester, and several earls and barons of his party attended, a bull of the pope to the like effect was produced. But on both occasions the recalcitrant barons refused to submit, and declared their determination to adhere to the Provisions.

* 1 'Report on the Dignity of a Peer,' p. 56.

† Printed in 'Report on the Dignity of a Peer,' vol. iii. p. 13.

Passing over some intermediate transactions between the contending parties, we come now to the memorable occasion when the representation, *as well of boroughs as of counties*, appears—so far as any record is extant—to have been first instituted. In 1264 the Battle of Lewes occurred, when the king was taken prisoner. The subsequent acts occurred during his captivity. In the following year, January 30, 1265, a parliament was held in London, in obedience to writs of summons addressed in the king's name to a numerous body of barons, prelates, abbots, and other dignitaries, and also to the sheriffs of counties, and to various cities and boroughs. The sheriffs of each county throughout England were commanded to cause 'two knights of the more loyal and discreet knights of the several counties' (duos milites de legalioribus et discretioribus militibus singulorum comitatuum) to attend at the time appointed. 'In the same manner summonses were addressed to the citizens of York, the citizens of Lincoln, AND TO THE OTHER BOROUGHS OF ENGLAND, to send in the aforesaid form two of their more discreet and approved citizens and burgesses;' and similar writs were sent to the Cinque Ports. The records do not set forth the form of the writs to the cities and boroughs; but it is conjectured that they resembled the writs to the Cinque Ports which are addressed to their barons and bailiffs, and command them to send four of the more loyal and discreet men of these ports to treat with the prelates and magnates, and grant an aid.

Very memorable are these first writs for the election of citizens and burgesses, as well as knights, to attend parliament. We thus arrive at that great epoch in the history of our constitution, the summons of a complete representative assembly. The earlier parliaments included only the barons and great men of the kingdom, except the one or two cases in which knights of the shire were summoned. Even the Provisions of Oxford, which added greatly to the political power of the people, made no provision for the representation of towns.

The parliamentary representation, for which this assembly of 1265 afforded a memorable precedent, did not immediately, nor for a long time afterwards, become an established institution. Henry III. reigned several years after he recovered his liberty, but he never again summoned a parliament like that which met during his captivity. An interval of thirty years occurs before we can find any record of another general summons of knights, citizens, and burgesses to one assembly. Edward I., who succeeded his father in 1273, assumed, as his predecessors had done, the prerogative of making laws, with

the assent of prelates and barons specially summoned to his councils. Thus in the third year of his reign, the celebrated statute of Westminster the First, and in the seventh year the statute of Mortmain seem to have been so enacted. Again, in the eleventh year of his reign the statute of Acton Burnel 'de mercatoribus' was passed 'by the king and his council;' and it is at least a matter of doubt whether knights, citizens, and burgesses concurred in enacting that law.* A similar remark applies to the statutes of Gloucester (6 Edward I.), and the great statute (13 Edward I.) 'de donis conditionalibus,' regulating the law of entails, and the statute of Winchester (13 Edward I.), by which most important provisions were made for the administration of justice and the public peace. The laws made in the earlier part of the reign had an immense effect in altering the institutions of England, and determined the rights of property for centuries afterwards. Rules originally established by the legislation of this period have become imbedded in English jurisprudence, and yet the representatives of the people seem to have had no direct share in establishing a code of so great importance to the interests of the country. It may indeed be conjectured that they were occasionally indirectly consulted. Thus the statute of Acton Burnel (just mentioned) was made at a parliament to which knights, and citizens, and burgesses of some few cities and boroughs were summoned to consider the affairs of Wales and other matters. It is quite probable that the representatives so summoned to this parliament were consulted about the statute of Acton Burnel then passed, but we have no direct authority for that conclusion.

Notwithstanding this uncertainty respecting the legislative power of the commons, for some years after the accession of Edward I., there are strong proofs that in his reign it came to be well understood that grants to the crown were not to be exacted from the people without their consent previously expressed by their representatives. This doctrine was not established all at once. Long after it had been distinctly recognised by the crown, and apparently by the courts of justice, we shall find that subsidies were occasionally imposed without due sanction. It seems very important to observe, that in many of the earliest instances the aids to the crown were considered to be granted, not by *free tenants* or *freeholders*, but by free *men* (liberi homines) —a very different class of people, as I have shown in a former chapter. Thus, in 3 Edward I., we find a writ 'to the arch-

* 1 'Report on the Dignity of a Peer,' p. 191.

bishops, bishops, abbots, priors, earls, barons, knights, *free men*, and all other our faithful men of the county of Chester,'* reciting that the 'prelates, earls, barons, and others of our kingdom,' have granted a fifteenth of their goods, and requiring such a subsidy from that county. Again, in 11 Edward I., two great assemblies were held, the one at Northampton, to which representatives of thirty-two counties were required to be sent; the other at York, to which the representatives of five counties were summoned. The sheriffs were at the same time directed to send two representatives for each city, borough, and market town (villæ mercatoriæ). Letters patent, which are still extant, were previously addressed to the ecclesiastical dignitaries of the province of York, and their proctors, 'and all the knights, free men, commonalties, and all others of the several counties beyond the Trent, then about to be assembled at York'† (militibus liberis hominibus communitatibus et omnibus aliis de singulis comitatibus ultra Trentham apud Ebor. in instantibus octab. Sancti Hillarii conventuris), empowering the Archbishop of York and the Archdeacon of Durham to ask and procure a subsidy from the lieges of every bishoprick and county beyond Trent. Another writ shortly before directs certain persons to order and dispose of the services 'which the knights, free men, communities, and all others of the several counties beyond Trent' had granted. Here appears a distinct recognition of the principle, that the *free men* of the country were to have a voice in the grant of aids to the crown.‡ The 'Report on the Dignity'§ twice translates 'liberi homines' in these documents by the word freeholders. That translation is certainly inaccurate. It has been shown in a former chapter, that at this period the free men included a large number of persons who were not freeholders. To confound the words 'liberi homines' and 'liberè tenentes' is equivalent to begging the whole question whether the right of parliamentary election in the time of Edward I. depended on the tenure of land.

It appears that the contemporaneous assembly at Northampton made a grant to the crown. A writ‖ (11 Ed. I.) to 'the knights, free men, and whole community of Hampshire,' recites that they had lately, by four knights sent on the 'part of the community of the same county to Northampton, courteously

* Rex Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, Militibus, Liberis Hominibus et omnibus aliis fidelibus suis de comitatu Cestriæ salutem.—1 'Parliamentary Writs,' p. 4.

† *Ibid.* p. 11.

‡ *Ibid.* p. 11.

§ Vol. i. p. 187.

‖ 1 'Parliamentary Writs,' p. 13.

(curialiter)* granted the king a subsidy on account of the expedition into Wales.' Similar writs of the same date were addressed to the knights, free men, and community of other counties.† In these documents we find the several counties stated to have made each their own grant by their own representatives. Evidently the sound constitutional doctrine of later times, that a member of parliament is a representative of the whole of the commonalty of the kingdom, and not merely of the constituency which elects him, had not been established at this period.

That villans as well as free tenants were taxed to this subsidy, appears very distinctly from contemporaneous documents. A writ of the same year (11 Ed. I.) to the collectors of the thirtieth in the county of Hereford, in favour of Robert de Bodeham, exempts him on account of his personal services in Wales, from the taxation of his own goods, but directs that, nevertheless, the goods of his 'free tenants and villans' are to be taxed in the regular form (proviso quod bona libere tenencium et villanorum predicti Roberti in eodem comitatu per vos taxentur in formâ inde provisâ). Several other persons obtained similar concessions by writs addressed to the collectors of other counties with the like proviso for the taxation of their villans and free tenants.‡

There are numerous proofs of the taxation of villans in the time of John and his successors. Various transactions which

* The meaning of the word *curialiter*, which I have here translated 'courteously,' is not unimportant. 'The Report on the Dignity of a Peer' says (vol. i. p. 19), 'extraordinary aids are sometimes described as granted "curialiter," importing probably that the grants were made by an assembly, convened for the purpose, of the king's great court, and that the aid was there regularly granted.'

I believe the meaning here given to the word 'curialiter' to be altogether erroneous, and that it simply means courteously. In the collection of 'Royal Letters of the Reign of Henry III.' (vol. ii. p. 333), there is a letter from the king, addressed evidently to the abbots and lower clergy, which conclusively shows that the word 'curialiter' does not mean 'in a court.' The letter (dated 54 Henry III.) recites that the bishops who came to the king last Easter have granted a twentieth; states that it is impossible to call a parliament, but prays the persons addressed that they, notwithstanding, will grant a twentieth *benigne et curialiter*, which must mean kindly and courteously; for it is expressly stated that they are not expected to assemble in a parliament. Moreover they are asked to make the grant with like courtesy (pari curialitate).

† Apparently these writs have been discovered since the 'Report on the Dignity of a Peer' was written; for in that work it is said (vol. i. p. 187), that 'the committee have not discovered whether any grant was obtained from the assembly at Northampton.'

‡ 1 'Parliamentary Writs,' p. 387.

will be cited in the course of this chapter, put it beyond doubt that, in the reign of Edward I., taxation and representation were, in law, regarded as inseparable. These considerations, even if they stood alone, would render it almost certain that villans acquired a share in the representation in that reign.

In the eighteenth year of Edward I. (June 1, A.D. 1290), the 'prelates, earls, barons, and other magnates,' granted, 'for themselves and the whole community,' an aid to the crown of forty shillings on each knight's fee.* Shortly afterwards, by writs tested June 14, 1290, the sheriffs of all the counties of England are directed to cause the election of knights of the shire. The language of these writs is interesting, because it draws a distinction between limited assemblies of lords and the more general assemblies in which representatives were to appear. It refers to the recent consultation of earls, barons, and other chief men (proceres) on certain special matters 'upon which we desire to have a consultation, as well with them as with others of the counties of our kingdom,' and then commands the sheriff to cause two or three knights of the county to be elected without delay, and to appear at Westminster three weeks after the day of S. John the Baptist, with full power for themselves and the whole community of the said county to consult and consent for themselves and the county respecting those things which the earls, barons, and aforesaid proceres should agree upon.†

The returns of the sheriffs to these writs give some valuable indications of the mode in which the election was conducted. In several instances, the returns state the elections to have taken place in 'full county court,' or by the 'assent of the whole county.' The mainceptors, or sureties, who are pledges for the due attendance of the elected persons, are in most instances named. In Lincolnshire, the sheriff makes a special return. He returns the names of three persons elected, but with respect to one of them, Gilbertus de Nevill, he adds, 'Gilbert de Nevill was not in the county of Lincoln when the election took place, nor ever since, and I have not found any one in his absence who was willing to be surety for his attendance at the day in the writ contained according to the form of the writ. And the stewards and suitors of the said county (senescalli et sectatores predicti comitatus) were unwilling to elect any one else in the

* This grant, and the date of it, are recited in a later writ of 30 Edward I. 'Parliamentary Writs,' vol. i. p. 132.

† The writ, together with the returns, is printed. 1 'Parliamentary Writs,' p. 21, *et seq.*

place of the said Gilbert, but gave full power to the aforesaid two knights for doing and receiving all the premisses, if Gilbert de Nevill do not come on the day in the writ contained.'* We have here unambiguous evidence, that at this date it was well understood that the election of knights of the shire was to take place in the county court, and that the electors included the sectatores or 'suitors' of that court.

In this parliament a fifteenth was granted to the crown. Who were deemed to be the grantors, appears by the commission for collecting it. The commission for Suffolk is extant; it is addressed to the 'knights, freemen, and whole community of the county' (militibus liberis hominibus et toti communitati comitatus). Nothing is said in this commission about *free-holders*.† The contrast between the two assemblies of 18 Edward I. is very instructive. The first is a meeting of prelates, barons, and great men: they grant an aid which is to be assessed on knights' fees only. The second assembly includes persons elected by the whole 'community' of each county: their grant is assessed on the freemen and whole community of the county. In other words, the representation and taxation were in each case co-extensive.

In 1295 (23 Edward I.) we come to another chief epoch in the history of parliamentary institutions — the regular and general representation of cities and boroughs. The memorable parliament of 49 Henry III., January 20, 1265, was evidently not regarded by Edward I. as a binding precedent. The circumstances connected with the convocation of that assembly naturally induced him to regard it with disfavour. It was summoned by the influence of the Earl of Leicester, by whom the king (Henry III.) had been defeated and taken prisoner at the Battle of Lewes in the previous year. Prince Edward shortly afterwards delivered himself up to the victors as a hostage for his father, and was sent under guard to Dover castle. The parliament of January 20, 1265, was held during his captivity. In the May following he escaped, and took measures to liberate his father. This liberation was effected by the Battle of Evesham (August 4, 1265), when the Earl of

* 1 'Parliamentary Writs,' p. 23.

† *Ibid.* p. 24. The first mention of freeholders in parliamentary writs, appears to be in 22 Edward I. In that year a parliament, attended by knights of the shire, granted a tenth. The commissions for collecting it are directed to the 'knights, freeholders, and whole community' (militibus, libere tenentibus, et toti communitati) of each county. 1 'Parliamentary Writs,' p. 27. From the addition of the words 'toti communitati,' and from the tenor of the commissions, it is certain that the grant was not confined to freeholders.

Leicester was slain, and his adherents routed. One of the first acts of Henry III. after this success was, to declare that his letters and concessions, under the royal seal, during the usurpation of Simon de Montfort, were void.

The parliament of 49 Henry III. was therefore treated as a revolutionary proceeding, and Edward I., who must have had bitter recollections of the humiliation of his father and himself, showed no inclination to adopt the convention of that period as a precedent. Until the twenty-third year of his reign there was no similar assembly. In one or two instances, indeed, at an earlier period there was (as we have seen) a partial and incomplete representation of towns and counties. Thus, in the remarkable double parliament of 11 Edward I., when the representatives of thirty-two counties met at Northampton, and the representatives of five counties at York, two men were summoned for every city, borough, and market town.* A few months afterwards London and twenty other cities severally sent two citizens to a parliament at Shrewsbury.† But the first instance in this reign of a general summons of knights, citizens, and burgesses to one general national council, was in 23 Edward I., A.D. 1295, when the sheriffs received writs for the election of two knights of every county, and two citizens of each city, and two burgesses of each borough therein, with full and sufficient power for themselves and the 'communities' of their several counties, cities, and boroughs to do what should be ordained of the common council in the premisses. This council was summoned to attend on the Sunday after the next feast of S. Martin, at Westminster.

The reasons assigned by the king for convening this assembly are very remarkable. He recognises explicitly the right of the whole community to be consulted on matters affecting their common interest. The commencement of the writs‡ to the prelates runs thus: 'Whereas a most just law, established by the provident circumspection of sacred princes, exhorts and ordains that what affects all by all should be approved; so also it declares evidently that common dangers should be met by remedies provided in common.'§ He then refers to a contem-

* 1 'Parliamentary Writs,' p. 10.

† *Ibid.* p. 16. In this instance writs were directed to the mayors and citizens, or to the mayors or bailiffs and probi homines of the cities and towns. The writs to the sheriffs of counties directed the election of knights of the shires only.

‡ 1 'Parliamentary Writs,' p. 30.

§ Sicut lex justissima providâ circumspectione sacrorum principum stabilita, hortatur et statuit ut quod omnes tangit, ab omnibus approbetur, sic et innuit evidenter ut communibus periculis per remedia provisa communiter obvietur.

plated invasion by the King of France, with a very great fleet and multitude of armed men, with which he is about to attack the kingdom and its inhabitants, and 'if his power correspond to the detestable purpose of his conceived iniquity (which may God avert), to utterly efface the English language from the earth.' The writ then proceeds to command the attendance of the prelates and clergy to treat, ordain, and determine with us and the rest of the prelates, chief men, and *other inhabitants of our realm* (aliis incolis regni nostri), how dangers and designs of this kind shall be obviated.'

It is observable that, in this summons, the first example subsequently to the isolated revolutionary proceeding in 49 Henry III., of convoking a complete parliament of lords, clergy, counties, and towns—reference is made not to usage nor to any established law, but to a general principle, the right to consult in common about common dangers; and that right is expressly extended to the 'inhabitants' of the realm generally.

The sheriffs' returns to this parliament are extant,* and show that, besides knights of the shire, representatives were sent from about one hundred and twenty cities and boroughs. In this parliament, an eleventh of all their moveables was granted by the earls, barons, and others of the kingdom (alii de regno); and the citizens, burgesses, and good men of the demesnes, cities, and boroughs (alii probi homines de dominicis nostris Civitatibus et Burgis) granted a seventh. This appears from the writs for collecting the eleventh and seventh.† From the words just cited, the 'Report on the Dignity of a Peer' makes the seriously erroneous inference, that only cities of the royal domain were required to send members to the parliament. The Report says: 'the grant of the *cives burgenses et probi homines* being confined to such as were *de dominicis civitatibus et burgis*, it seems to follow that the *cives burgenses et probi homines* of such cities and boroughs only as were of the king's demesnes were summoned to send representatives to that parliament.' In other words, the writers of the Report adopt Dr. Brady's theory, that the original representation of boroughs was a peculiar privilege conferred on royal cities. But the language of the documents on which this theory is founded is mis-stated. The writs do not say that the only cities and boroughs which made a grant were those of royal demesne, but that the places described by the words, 'de dominicis nostris civitatibus et burgis' made a larger grant than the rest.

* 1 'Parliamentary Writs,' p. 34, *et seq.*

† *Ibid.* p. 45.

It seems very extraordinary, that writers on this subject have not observed that the words just quoted admit of a translation very different from that given in the Report. Instead of 'domain cities and boroughs,' I submit that the rendering ought to be, 'the demesnes, the cities, and the boroughs.' This version renders the writs consistent with similar instruments of the same period, in which almost the same words are used in an order which renders the meaning here suggested indisputable. For instance, in writs of July 30, 25 Edward I., the prelates, barons, and knights and others, laics of our kingdom 'not within cities, boroughs and demesnes' (extra civitates, burgos et dominica nostra) are said to have granted a ninth, and 'the citizens, burgesses and other good men, of all and singular the cities and boroughs of the same our kingdom, of whatever tenures and franchises they were, and of all our domains'* to have granted a fifth. Similarly, in 34 Edward I., a grant of a thirtieth was made for the whole community of the counties of the kingdom, 'and the citizens and burgesses and communities of all cities and boroughs of the same kingdom, and also the tenants of our demesnes' (Civesque et Burgenses ac communitates omnium civitatum et burgorum ejusdem regni necnon tenentes de dominicis nostris) granted a twentieth.† Again, in 1 Edward II., the 'citizens, burgesses, and communities of all cities and boroughs of the same kingdom, *and also* of antient demesnes of our crown' granted a fifteenth (civesque et burgenses ac communitates omnium civitatum et burgorum ejusdem regni necnon tenentes de antiquis dominicis coronæ nostræ).‡ We must here suppress the word 'also' (necnon), if we would maintain the theory, that only boroughs and cities of royal domain concurred in the grant. Lastly, to cite only one more of many similar instances to the like effect, commissioners are sent in 8 Edward III. to treat 'with the communities of cities and boroughs, and the men of towns and of antient domains' (cum communitatibus civitatum et burgorum ac hominibus villarum et dominicorum antiquorum).§

In all these instances cities and boroughs are clearly distinguished from royal domains. *All* cities, and *all* boroughs were taxed besides the royal domains. It is therefore in the highest degree improbable, that the taxation of 23 Edward I.

* Cives burgenses et alii probi homines de omnibus et singulis civitatibus et burgis ejusdem regni nostri de quorumcumque tenuris et libertatibus fuerint et de omnibus dominicis nostris.

† 1 'Parliamentary Writs,' p. 178.

‡ 2 'Parliamentary Writs,' p. 16.

§ 3 'Rotuli Parl.' p. 447.

included only royal cities and boroughs. Moreover, the inference of the 'Report on the Dignity of a Peer,' that only such cities and boroughs were then represented, is simply contrary to fact. The returns to the parliament of 23 Edward I. have been printed since the Report was written; and in a later chapter of this work, it will be shown that a very considerable number of the towns which made those returns were *not* of royal domain.

The parliament of 23 Edward I. has such an important place in our constitutional history, that all the circumstances which tend to show its nature and authority deserve minute examination. It seems quite clear that the grants of that parliament were assessed not merely on freeholders, but on villans also. The writs for the collection are addressed, indeed, to the 'milites, free *tenants*, and whole community' of each county (militibus, liberè tenentibus et toti communitati comitatus). But that the words 'free tenants' have no restrictive operation appears from the context. They are coupled with 'whole community,' and the writ directs that the grant shall be levied on the same persons as another of a tenth, which had been granted shortly before. On reference, it will be found that this tenth had certainly been assessed on villans, for there are extant writs,* addressed to the collectors of various counties, superseding, for specified reasons, the taxation of the villans of certain bishops—a plain proof that, without this special exemption, they would have been liable to taxation.

At this period the right of the people to give or withhold aids to the crown was stoutly maintained. This we see clearly in the history of an illegal taxation ordained by the king shortly afterwards. In February 1297 (a little more than a year after the meeting of the complete parliament just described), the king convoked an assembly of barons, without either prelates, knights, citizens, or burgesses. In consequence of the contumacy of the clergy, who had in the previous year refused a grant to the crown, they were not summoned to this parliament, but the king met with equal opposition from the laity. When he proposed to the magnates, that they should cross the seas into Gascony, they severally excused themselves. Upon the refusal of the Earl of Norfolk, the king is said to have exclaimed with an oath, 'Earl, thou shalt go, or hang.' The Earl replied, 'By the same oath, O king, I will neither go nor hang,' and, without waiting for licence, departed, and the assembly was dissolved. The earls and their followers retired to their estates,

* 1 'Parliamentary Writs,' p. 392.

and prevented the king's officers from making illegal levies.* The king, however, endeavoured to charge the people with an extraordinary aid. In the July following, writs were addressed to the 'milites, free tenants and whole community' (militibus libere tenentibus et toti communitati) of each county, reciting that 'the earls, barons, milites and other laics of our kingdom, without cities and boroughs, and our demesnes,' had granted an eighth, and the cities, boroughs and royal demesnes a fifth; and the writs directed the collection of these grants.†

But this exaction was strenuously resisted, and expressly on the ground that the grant had never been made by the only competent authority—that of prelates, barons and the commonalty. On the Thursday next before the feast of S. Bartholomew (22nd Aug. 1297), that is, about three weeks after the date of the commissions for collections of the eighth, the Earls of Hereford and Norfolk, with the leading barons of their party, appeared at the bar of the Court of Exchequer, and in the name of themselves and of the 'communaute' of the kingdom, as well clerks as laymen, protested against these commissions, and objected that they stated the grant to have been made by the earls, barons, knights and the 'communaute' of the kingdom, whereas, they never did grant the same. The statement of these proceedings was instantly transmitted to the king, who had gone to Flanders, and he returned answer that the levy of the eighth should not be turned into a precedent. Accordingly letters patent, declaring that the levy should not prejudice the people for the future, were issued by Prince Edward, tested at Tunbridge, 28th Aug, 1297.‡

This, however, was not deemed a sufficient guarantee against the recurrence of like irregularities. In a parliament held in the next month, September 30, a law was passed to prevent the taxation of the people without their consent. It is true that the great statute De Tallagio non concedendo, which is here referred to, was passed in a parliament to which the representatives of counties only and not of cities and boroughs were summoned. But the enactment was solemnly confirmed by the king, and became and has ever since been deemed one of the

* 1 'Parliamentary Writs,' Chronological Abstract, p. 28.

† 'Rotuli Parl.' p. 25, ed. 1; 1 'Parliamentary Writs,' p. 52. Cum comites Barones milites et ceteri laici regni nostri extra Civitates Burgos et dominica nostra octavam partem omnium bonorum suorum mobilium et cives Burgenses et alii probi homines de omnibus et singulis Civitatibus et Burgis ejusdem regni nostri de quorumcumque tenuris aut libertatibus fuerint et de omnibus dominicis nostris quintam partem, &c.

‡ 1 'Parliamentary Writs,' Chronological Abstract, p. 32.

fundamental laws of this kingdom. It provides that 'no talliage or aid shall by us or our heirs be imposed or levied in our kingdom without the will and assent of the archbishops, bishops, barons, milites, burgesses, and the other free men of our realm.'*

No words could more largely or more distinctly declare the right of the community to regulate grants to the crown. Not a word is said about limiting this right to freeholders or the possessors of any other kind of property. The qualification of the classes who are to exercise the right is personal, not proprietary—they include all the *freemen of the realm*. Thus the statute not merely declares the title of the people to control taxation, but also effectually defines the parliamentary suffrage.

How thoroughly well the connection between taxation and representation was then understood appears in a very remarkable manner by the proceedings of this very parliament. It has been observed that knights, but not citizens or burgesses, were summoned. The parliament granted an aid of a ninth. On whom was it levied? On all the persons in the kingdom except those in cities, boroughs, and royal demesnes;† that is, the people who had not been represented at the parliament were not taxed. The writs for collecting the tax (14 Oct. 1297) are expressly so restricted. A week afterwards (23 Oct. 1297) further writs are issued for the collection of the tax in the cities, boroughs, and royal domains. An indorsement on the patent roll states that this step was taken in accordance with a grant previously made in common for the purpose (juxta concessionem prius super hoc communiter factam).‡ It appears that after the grant of the lords and knights of the shire, the city of London made the same grant, and it may be conjectured that other towns did the like at the same time. But even supposing the statement just quoted from the Patent Roll to be untrue, it is an admission of the principle that the towns ought not to be taxed without their consent. And the resolution of parliament on the subject is unmistakable.§

* Nullum tallagium vel auxilium per nos vel heredes nostros in regno nostro ponatur seu levetur sine voluntate et assensu Archiepiscoporum, Episcoporum, Comitum, Baronum, Militum, Burgensium et aliorum liberorum hominum de regno nostro. Authorised Edition of the Statutes, vol. i. p. 6.

† Archiepiscopi episcopi abbates priores comites milites et alii de regno nostro extra civitates burgos et dominica nostra. I 'Parliamentary Writs,' p. 63.

‡ *Ibid.* p. 64.

§ That villans were assessed to this tax of a ninth appears from the form given in the first volume of the printed 'Rolls of Parliament,' I. p. 240 b. Considering the doctrine of taxation which then prevailed, it seems difficult to suppose that a large class thus directly taxed was entirely excluded from a share in the representation.

The writs for the summons of knights, citizens and burgesses, in this and several following reigns preserve a general uniformity. The following translation of writs to the sheriffs, tested 30th April, 26 Ed. I. (1298) summoning a parliament for the 25th of May following, may be taken as a type.

'Edward by the Grace of God, King of England, Lord of Ireland, and Duke of Aquitain to the Sheriff of Bedfordshire, greeting. Whereas we purpose, God willing, to be at York at the ensuing feast of Pentecost, and desire there to hold a colloquy and treaty (colloquium et tractatum) with the earls, barons and other chief men (proceribus) of our realm, upon affairs touching us and the state of the said realm, on which account we have commanded the same earls, barons and chief men, that they then be with us there to speak with us and to treat upon the said affairs: We command you, firmly enjoining that you cause of the aforesaid county, two knights (milites), and of each city of the same county two citizens, and of each borough two burgesses, of the more discreet and more able for business (de discretioribus et ad laborandum potentioribus), to be elected without delay, and cause them to come to us at the aforesaid day and place. So that the said knights may have full and sufficient authority for themselves and the community of the said county, and the said citizens and burgesses for themselves and the community of the said cities and boroughs respectively, then and there to do what then of common council shall be ordained in the premisses, so that the aforesaid affairs may not, by reason of defect of such authority, in any wise remain undone: and have there the names of the knights, citizens and burgesses, and this writ. Witness myself at Fulham the 13th day of April, in the 26th year of our reign.'

In the language of these writs, except so far as we choose to attach meaning to the word 'community,' there is no distinct statement respecting the class of persons who were to be electors. But the writs for the collection of aids granted by parliament, are much more explicit on this subject. A parliament at Lincoln, to which knights, citizens and burgesses were summoned in the usual form, granted (20th Jan. 1301) a fifteenth to the crown. In the October following, writs were addressed to the sheriffs of all the counties, commanding each to convene the community of his county, and elect three or four persons to assess and levy the tax. This was done; and the persons so chosen were confirmed by writs to the 'milites, freemen, and whole community' of each county, authorising the persons so elected to collect the subsidy. The latter writs com-

mence thus: 'The King to the milites, freemen (liberis hominibus) and whole community of the county of York, greeting. Whereas, you, as well as the rest of the communities of our realm, lately granted to us in our parliament at Lincoln, a fifteenth, &c.,' and similarly for the other counties. Here is a plain statement that the milites, freemen and whole community of the county, were represented in the parliament at Lincoln. The words 'you, as well as the rest of the communities,' show that 'community' was held to comprise the knights and freemen of the several counties.

We have abundant evidence that, both before and after this time, aids granted by parliament were levied on villans as well as others. With respect to this very tax of a fifteenth, there are writs of February 9, 1302, which state that it is not confined to free tenants; it is to be levied from the temporal goods 'of all persons of our kingdom of whatever condition.'* At the time when these writs were issued, the words 'liberi homines' had a meaning well settled by law and constant familiar usage; they distinguished freemen from serfs. It would be a violent assumption to suppose that in the important public documents in question the words were used in a non-natural sense. Again, the reason assigned for collecting the tax from all classes of the community is, that it has been granted by the whole community. The writ would be inconsistent with itself, unless it intended that the class to be taxed was co-extensive with the class which granted the tax.

Similar observations apply to the writs of 22nd July, 34 Ed. I. (1306), for collecting the grants of another Parliament held at Westminster in that year. The preamble is: 'The king to the *freemen* and whole community of the county of Lincoln, as well within the liberties as without, greeting: Whereas the archbishops, bishops, abbots, priors, earls, barons, knights, *free men*, and communities of our realm have conceded and granted to us courteously (curialiter) a thirtieth part of all their temporal moveable goods, and the citizens and burgesses of all the cities and boroughs of the same realm, and also the tenants of our demesnes, a twentieth,' &c.†

If the multiplication of authorities on this point appear needlessly prolix, it should be considered that it has been stoutly controverted, and that it is of fundamental importance with reference to the origin of our representative system.

* Bona temporalitatis tam ecclesiasticarum quam secularium et aliarum quarumcumque personarum de regno nostro cujuscumque conditionis existunt. 1 'Parliamentary Writs,' p. 110.

† *Ibid.* p. 178.

There are numerous proofs that in the following reign, that of Edward II., parliamentary grants were deemed to be made by the whole class of free men throughout the country. Thus, in 1 Edward II.,* a writ addressed to the 'milites, free men, and whole community' of Middlesex, states that the 'earls, barons, milites, free men of the counties of our kingdom,' had granted a twentieth, and the 'citizens, burgesses, and communities of all the cities and boroughs of the same kingdom, and also the tenants of the antient demesnes of the crown,' a fifteenth.

A similar form is observed with respect to the grant of a twenty-fifth in 3 Edward II. by the 'earls, barons, milites, free men, and whole community of our kingdom.'† To the like effect are the writs for collecting a twentieth and a fifteenth, in 7 Edward II.‡ The classes making the grant include the free men (liberi homines). The corresponding word in the Norman-French form for assessing this grant is 'franes hommes,' and these forms provide expressly for the taxation of villans. 'Also the goods of villans of prelates, men of religion, and other clerics shall be taxed in this taxation: Provided that the rents and other services which the same villans render to their lords, of which the king taketh a tenth by the same lords, be subtracted in the taxation of the goods of villans, and of the residue the twentieth levied.'§

Among other instances in which the freemen are expressly said to have participated in making grants to the crown, may be cited the writs 10 Edward II., addressed to the milites, freemen, and whole community of each county, for the collection of a sixteenth, stated to have been granted by the earls, barons, freemen, and communities of the several counties (comites, barones, liberi homines, ac communitates comitatuum) at Lincoln. In the form of taxation a special provision again is made for

* 3 'Parliamentary Writs,' p. 14. Rex Militibus Liberis Hominibus et toti communitati comitatus Middlesex tam infra libertates quam extra. Cum comites, Barones, Milites, Liberi Homines ac communitates comitatuum regni nostri vicesimam omnium bonorum suorum mobilium civesque et burgenses ac communitates omnium civitatumet burgorum ejusdem regni necnon tenentes de antiquis dominicis corone nostre quintam decimam bonorum suorum mobilium nobis curialiter concesserint.

† 3 'Parliamentary Writs,' p. 38.

‡ *Ibid.* p. 116.

§ Ensement les biens des villeins as Prelatz Gentz de religion et autres clers soient taxez en ceste taxacion. Issint que rentes et autres services que meismes les villeins fount a leur seigneurs, dont le Roy prent disme ore par meismes les seigneurs soient souztretz en la taxacion des biens des villeins et du remenant le vintisme levee. *Ibid.* p. 118.

the taxation of the villans of clerics on the residue of their goods, after deducting payments to their lords.* A similar regulation is made for the taxation of villans, with respect to a grant of a twelfth, in 12 Edward II., which is said to be granted by the earls, barons, free men, and commonalties of the counties (les countes, barons, franks hommes, et les comunaltez des countes).† In none of the parliamentary writs of this reign are free *holders* or free *tenants* mentioned. The whole of the freemen were taxed, and the villans are included in the taxation, with an abatement, as already mentioned, in taxing the villans of clerics.‡

During the whole period of parliamentary institutions which has hitherto been considered, it is clear that the representatives of shires usually were elected in the county court. From the very dawn of our present constitution this method of election prevailed.

The earliest set of returns by the sheriffs which are given in the 'Parliamentary Writs' are in 18 Edward I. (A.D. 1290). The representatives of Lincoln are returned by the sheriff to have been chosen 'in full county court by the assent of the whole county' (in pleno comitatu per assensum totius comitatus). In Gloucestershire the election is said to have been made by 'the whole community of the county.' In Oxfordshire, and again in Berkshire, the knights are said to be chosen in full county court (in pleno comitatu electorum).§ So in 24 Edward I. the return for Somersetshire and Dorsetshire states that the elections took place in full county courts (in plenis comitatibus).‖ In 25 Edward I. the same form is observed in the returns from those counties. ¶

In a subsequent chapter it will be shown that, by an enactment in the reign of Henry IV., all persons whatsoever who chose to attend the county court were at liberty to take part in elections of knights of the shire. It will also be shown that

* 3 'Parliamentary Writs,' pp. 167, 169.

† *Ibid.* p. 212. Similarly in the grant 13 Ed. II., *ibid.* p. 216, 17 Ed. II., *ibid.* p. 286.

‡ A writ tested at York, Dec. 2, 1322 (16 Ed. II.) recites that in the last parliament the earls, barons, milites, freemen, and community of the counties (comites, barones, milites, liberi homines ac communitas comitatuum) granted a tenth (3 'Parl. Writs,' p. 278). The 'Report on the Dignity of a Peer' (vol. i. p. 233) erroneously translates 'liberi homines' in this and other places by the word 'freeholders.' The error is the more important, because the writers of the report found a theory upon it.

§ 1 'Parliamentary Writs,' pp. 22, 23.

‖ *Ibid.* p. 41.

¶ 1 'Parliamentary Writs,' p. 60.

another statute in that reign declared this unrestricted suffrage to be an antient practice. These enactments alone, even if there were no other proofs, are quite sufficient to show that the same system prevailed at the period now more immediately under consideration. There is not a particle of evidence that the sheriffs had authority to summon particular persons or classes of persons to the election of knights of the shire, or to institute any scrutiny of votes, or to hold the court otherwise than as an open court, free to all comers. I have in one return, and one only, found evidence which would give some countenance to the theory that particular classes were summoned to the choice of knights. It is a return of the sheriff of Surrey and Sussex, in 25 Edward I., in which he states that he assembled the *milites* and *libere tenentes*. But he does not state that he summoned them only; and as he had no powers of scrutiny, the law at that period did not give him any means of excluding the suffrages of other classes of the population. The language of nearly contemporaneous returns clearly shows that the whole body of the inhabitants of counties were free to take part in the choice of representatives. In 26 Edward I. the election for Somerset is said to have taken place 'in full county court by the whole community (per totam communitatem) of the said county.'* It would be impossible without putting a forced interpretation on these words, and others to the same purport, in various returns of this and the following reign, to suppose that the electors were merely one class of tenants. In Middlesex, 5 Edward II., the sheriff indorses that the election took place, 'the community of the whole of my county being assembled' (congregatâ communitate totius comitatus mei). In 8 Edward II. the sheriff of Northumberland makes a special return, which shows how the parliamentary writs were taken into consideration in the county court. 'This writ was shown in full county court, when it was answered to me that all the *milites* of my bailiwick are not sufficient for the defence of the marches. And a mandate was sent to the bailiffs of the liberty of the town of New Castle upon Tyne, who thus answered—that all the burgesses of the said town scarcely sufficed for the defence of the same town; and so, with respect to the execution of this writ, nothing was done.'†

In the reign of Edward II. we see very distinctly the growth of the power of the House of Commons as a *legislative* assembly. In the preceding reign its functions had been almost exclu-

* 1 'Parliamentary Writs,' p. 74.
† 3 'Parliamentary Writs,' p. 145.

sively financial. The delegates of different counties and towns assembled at some appointed place, and declared what grants their constituents were prepared to concede to the crown; and this seems to have been the sum of their duties. But in the reign of Edward II. the power of the commons in making laws was formally recognised. By far the most important transaction of this reign, with reference to the development of parliamentary institutions, was the enactment in the fifteenth year (A.D. 1322), which declared that 'matters to be established for the estate of the king and his heirs, and for the estate of the realm and of the people, shall be treated, accorded, and established in parliament by the king, and by the assent of the prelates, earls, barons, and the commonalty of the realm, according as had been before accustomed.' In the most ample terms the supreme legislative power of the kingdom is declared to be resident in the King, Lords, and Commons assembled in parliament.

In the returns of sheriffs to parliamentary writs subsequently to this epoch, we again find frequent reference to the election of knights of the shire in full county court. In the return of the sheriff of Northampton (16 Edward II.) it is stated that the knights were elected by the consideration of the whole county of Northampton (per consideracionem tocius comitatus). In Rutland the election is stated to have taken place in a 'full county court held at Ockham.' In Wiltshire the election is similarly stated by the sheriff to have been made 'in my full county, held at Wilton.'*

The 'Parliamentary Writs' preserve a curious piece of evidence of the jealousy with which freedom of election was regarded at this period. In 17 Edward II., in the roll of pleas of the crown, is a presentment of the jurors of Derbyshire, who, among other accusations against a sheriff, present, 'that whereas a certain writ of the king came to the said William for the election of two knights to go to the king's parliament, who ought to be elected by the whole community of the county, the same William chose Gilbert de Haydok and Thomas de Thornton, without the assent of the county; who, when they returned from parliament, had a writ for levying their expenses, by which it was commanded to Richard and William de Wynwyk, bailiffs, to levy twenty pounds for the expenses of the said knights; whereas the community of that county could have had of their own election two sufficient men to go to parliament for ten marcs, or ten pounds.' The record states that the sheriff, when called

* 3 'Parliamentary Writs,' pp. 272, 273, 277.

upon for his defence, could not deny the aforesaid transgressions, and was sentenced to imprisonment.* The people of Derbyshire seem to have been influenced principally by economical considerations in resenting this interference with their constitutional rights.

In the writs for the summons of a parliament in 18 Edward II. (A.D. 1324) there is a somewhat remarkable variation in the prescribed form of election. The sheriffs are directed to return 'two of the better or more discreet milites, or others of the county, to be named by the assent and will of the men of the same county' (duos de melioribus et discrecioribus militibus seu aliis in utroque comitatu assensu et arbitrio hominum eorundem comitatuum nominandos). Accordingly, several sheriffs indorse on their writs that the election has been made by the assent and will of the *men of the whole county*.† It is observable here that the persons to be chosen are not required necessarily to be knights, and the electors are described in the largest possible terms as the 'men of the whole county.'

The language of the statutes of the following reign—Edward III.—frequently, though not uniformly, recognises the legislative power of the commons. Thus, the statutes of the first year are said to be granted by the king 'at the request of the commonalty of his realm by their petition made before him and his council; by assent of the prelates, earls, barons, and other great men assembled at the said parliament.' The statutes made at Northampton in 2 Edward III. are said to be made 'to the honour of God and of Holy Church, and to the common profit of the people, by assent of the prelates, earls, barons, and other great men, and all the commons summoned to the same parliament.' The statutes made at York in 2 Edward III. (A.D. 1335) recite that 'before this time in many parliaments, and now at this parliament summoned at York on the morrow after the Ascension, in the ninth year of the reign of King Edward the Third after the Conquest, it was showed to our Lord the King by the knights of the shires, citizens of the cities, and burgesses of the boroughs which come for the commons of the said shires, cities, and boroughs, that in divers cities, boroughs, and other places of his realm, great duress and grievous damage have been done. . . . Whereupon the said knights, citizens, and burgesses for them and the commons desired our said Lord the King in his said parliament, by their

* 3 'Parliamentary Writs,' p. 315.

† 3 'Parliamentary Writs,' p. 319 *et seq.*

petition, that for the profit and commodity of his prelates, earls, barons, nobles, and of the people of his realm, it would please him, without further delay, upon the said grievances and outrages to provide remedy.'

In the parliaments of Edward III. we find a continual assertion of the principle that each estate of the realm was to be taxed only by themselves or their representatives. Thus, in 13 Edward III. (A.D. 1339) the prelates, earls, and barons make a grant of a tenth for themselves. The commons give their answer in writing: 'As it was necessary that a great aid should be granted, they dared not give their assent till they had advised and consulted the commons of their counties; and therefore they desired another parliament to be summoned, and in the meantime they would return to their counties, and would do their utmost to obtain for the king a proper aid; and they pray that writs be sent to every sheriff, that two of the most esteemed (mielx vanez) knights of counties should be elected and sent to the next parliament for the commons.' In the next parliament, January 20, 1340, the earls and barons grant for themselves and their peers of the land, who hold any barony, the tenth sheaf, fleece, and lamb of all their demesne lands, and the commons offer an aid of 30,000 sacks of wool, on certain conditions. In 14 Edward III. the prelates, earls, and barons made a grant for themselves and all their tenants; and the knights of shires and the *communes de la terre* for themselves. In 20 Edward III. the commons present a petition of grievances: 'That the king had assumed the power by his commissioners of charging the people with array without assent and grant of parliament.' It seems that the commission had issued on authority of an informal grant by the lords without the commons, which the latter considered an invasion of their rights. They did not dispute the right of the lords to make a separate grant for themselves, but only prayed that the commons might not be so charged.* In 22 Edward III. (A.D. 1348) the commons complain of many charges put upon them without their assent, and other grievances, but grant three-fifteenths to be levied in three years upon certain conditions—among others, 'That thenceforth no imposition, tollage, or charge by way of loan, nor in any other manner, should be put by the privy council of the king, without the grant and assent of the commons in parliament.'

To this complaint the unsatisfactory answer was returned, 'that the business shall rest till the king's council be better advised.' During this long reign there were several struggles

* 1 'Report on the Dignity of a Peer,' p. 319.

between the crown and the commons with respect to illegal charges upon the people. But the repeated remonstrances of the representative assembly undoubtedly tended to restrain these exactions, and to vindicate the parliamentary right of controlling taxation. In the following reign this right was constantly respected by the crown.

A cognate subject, the levy of *expenses of members of parliament*, here demands attention. From the very earliest times of representative government it was the practice that persons elected should, after their attendance in parliament, receive writs directed to the sheriffs for the payment of a remuneration for their services. The issue of these writs, 'de expensis,' began before the first constitution of complete representative assemblies in 49 Henry III. Writs of 43 Henry III., addressed to the sheriffs of several counties, direct the payment of the expenses of knights who had attended an assembly in the previous year.* A writ of 49 Henry III., directed to the sheriff of Yorkshire, recites that the knights of the several counties have been detained longer than they expected at the late parliament, which occasioned them great expenses; and commands that 'for the two knights who were present for the said county in parliament, you, by the counsel of four lawful milites of the same county, cause their reasonable expenses in coming to the said parliament, there staying, and thence returning to their own places, to be provided and levied of the same community.'†

These writs are of considerable constitutional importance, because they indirectly afford information respecting the classes represented. In the frequent disputes respecting knights' wages, it was assumed that those only ought to pay who were represented; consequently we frequently derive from these discussions an insight into the electoral system.

From a writ of 35 Edward I. (A.D. 1307) it is evident that tenants in villenage at that period generally contributed to the charges of knights of the shire. This writ, translated, is as follows:—'The king to the sheriff of Cambridgeshire, greeting. Whereas our beloved and trusty John de la Mare personally came at our mandate to our parliament at Carlisle, on the octaves of S. Hilary last past: We command you that you

* 'Report on Dignity of a Peer,' vol. ii. p. 4.

† Tibi precipimus quod duobus militibus qui pro dicto comitatu parliamento interfuerunt de concilio quatuor legalium militum ejusdem comitatus rationabiles expensas suas in veniendo ad dictum parliamentum, ibidem morando et inde ad partes suas redeundo, provideri et eas de eadem communitate levari facias. 1 'Report on Dignity of a Peer,' p. 143.

supersede altogether the demand which you make *in lands which are held of the said John in villenage in your bailiwick, for making contribution to the expenses of knights* who by the community of your county were sent to the said parliament: and if in any of the aforesaid lands on that occasion you shall have levied anything, that you thereon make restitution forthwith, removing altogether the distraint made in the same lands on that occasion.' *

The John de la Mare here mentioned was one of the magnates who, with several earls and barons, received a personal summons to attend the parliament at Carlisle in 35 Edward I. (A.D. 1307), and his name is entered on the parliament roll accordingly.† The writ just quoted shows that his villans, on the ground that their lord attended as a baron in parliament, were exempted from contributing to the expenses of knights of the shire. The inference is irresistible, that other villans who had not that special ground of exemption were required to contribute to expenses of knights, and therefore were deemed to be represented by them.

There are also various records of law proceedings in the reign of Edward II. respecting the wages of knights of the shire, which show that those charges were assessed on the free county tenantry generally; and consequently that this body composed the county constituencies.

In a suit in the Exchequer in 2 Edward II., which has been noticed in the preceding chapter, William de Goldington sought to recover the sum of ten pounds as his wages as a knight of the shire. The sheriff of Westmoreland, against whom the action is brought, answers that the parliamentary writ for these wages was taken into consideration in a full county court, and that upon discussion between the said William and the '*men of the community* of the said county,' it was agreed that he should have two pounds for his remuneration.‡ Here the

* 1 'Parliamentary Writs,' p. 191. Rex. Vic' Cantebrigiæ salutem. Quia dilectus et fidelis noster Johannes de la Mare personaliter venit de mandato nostro ad parliamentum nostrum apud Carliolum in octavis Sancti Hillarii proximo preteritis: tibi precipimus quod demande [*sic*] quam facis in terris que tenentur de predicto Johanne in villenagio in ballia tua pro contribucione facienda expensis militum qui per communitatem comitatus tui ad dictum parliamentum missi fuerunt supersedeas omnino: et si quid in terris predictis ea occasione levaveris inde restituticionem facias indilate, districcionem in eisdem terris ea occasione factam penitus relaxando. Teste Rege apud Laurecost xx. die Febr' per Consilium.

† 1 'Parliamentary Writs,' pp. 183, 185.

‡ Special agreements between representatives and their constituents appear to have been regarded as regular and lawful in the fourteenth and fifteenth

persons concerned in settling the amount are described largely as 'the men of the community of the county' (homines de communitate dicti comitatus). In a similar action in the same year against the sheriff of Hertfordshire, the declaration states that two persons were elected by the whole community of that county (per totam communitatem comitatus), and that their wages were to be levied on the *men of the county* (de hominibus comitatus). In another case in the same year (2 Edward II.), a claim of wages against the under-sheriff of Suffolk, the proof is still stronger. The plaintiff declares that fifteen pounds were levied on the 'whole community' of Suffolk for the expenses of the knights in going for the 'whole said community' to the parliament of 35 Edward I. 'to grant a thirtieth of their goods, as the rest of the kingdom of England had done;' but that part of the money had not been paid. The under-sheriff answers that he levied of the men of the body of the county which is in gildable (de hominibus corporis comitatus quod est in guldabili) sixty shillings only, which he paid the knights; but that he could not levy more, because two of the parts of the county were the franchises of S. Edmund and S. Etheldreda, which were exempt from his jurisdiction. The parties join issue, and a jury is directed to be summoned, 'twelve as well of the body of the county gildable, as of the franchises of S. Edmund and S. Etheldreda.'*

We have here a series of connected applications of the expressions 'community' and 'men of the county,' which are quite conclusive as to their meaning. The plaintiff was elected for the *community*, to assent to a grant of the *community*. But we know that villans were taxable to parliamentary grants; therefore they are included under the denomination 'community.' Again, the knights' wages were levied on the men of the body of the county which is in gildable; that is, subject to the county taxation; consequently the villans are again included. Lastly, a jury of twelve of the county and the two franchises are summoned. Abundant proofs were given in the preceding chapter that villans were summoned on county juries; it follows therefore that villans were assessed to knights' wages.

A frequent and, for us, very interesting controversy of the fourteenth century related to the liability of lords' tenants to

centuries. The following is a very curious instance. By an indenture in 3 Edward IV., between the bailiff of the town of Donewych and John Brompton, he agrees for his services in the next parliament, 'no more to be takyn for hys wagys than a cade of full heryng and halff a barell full of heryng, tho to been deliveryd by Chrystmasse next comyng.'—*Glanville*, 'Cases in Parliament,' 8vo. 1775, p. xxiii.

* The Latin records of these suits are given in Madox, 'Firma Burgi,' ch. 5.

contribute to the expenses of knights of the shire. How far were lords of parliament to be deemed the representatives of their own tenants? If the peers represented for all purposes their feudatories, these persons could have no concern in the election of knights of the shire, and therefore could not be justly called upon to contribute to their wages. The writ of 35 Edward I. respecting John de la Mare, which has just been cited, manifestly asserts the principle that his attendance as a lord of parliament justified the exemption of his *villans* from such contribution; but nothing is said about his free tenants. Were they also exempt? This point was the occasion of frequent and vehement controversies in subsequent reigns. Thus in 28 Edward III. (A.D. 1354), the commons 'pray that as tenants of lords who hold by barony and are summoned to parliament claim to be discharged of the expenses of knights, who come to parliament by the king's command, the king and his council will declare whether those persons shall be charged with the others of the county, or shall be discharged and the others charged. The king wills that it shall be done as heretofore.'*

The attempt to render lords' tenants liable to knights' wages was renewed at the very end of the reign. In 51 Edward III. (A.D. 1377), the commons in Parliament present a petition, reciting that 'of common right of the realm, of every county of the kingdom, there are and should be elected two persons to be at the parliament for the community of the said counties, save for prelates, dukes, earls, barons, and such as hold by barony, and who are and should be summoned by writ to come to parliament, except cities and boroughs which ought to elect for themselves such as should answer for them. Which persons elected by the commons of the said counties, have their accustomed expenses for the time of their stay, and for that have a writ to the sheriff to levy the amount. That it please the king to ordain in this parliament that such expenses be levied of all the commons of the said counties (de touz les communes des dites countees), as well within the franchises as without, except the franchises of the cities and boroughs, and except of those who come also to parliament by writ of summons, and of their tenants who hold in bondage (qui tiegnent en bondage).' The answer is as indecisive as heretofore: 'Let it be done as before has been the custom in this case.'†

In this, as in several preceding petitions, the commons

* 2 'Parliamentary Rolls,' p. 258.
† 2 'Parliamentary Rolls,' p. 368.

contended that all the tenants in counties were represented by the knights of the shires, except those villans of lords of parliament who were not free men, and except also the inhabitants of parliamentary cities and boroughs. But the expression was not intended to apply to free villans, as we shall show presently by reference to a parliamentary petition of 2 Richard II.

In 50 Edward III., the meetings of parliament having been intermitted for a period of nearly four years, the commons in parliament pray that the king will be pleased 'to establish by a statute that every year there may be held a parliament to correct errors and abuses in the realm, and that knights of counties of the better class of people shall be elected by common election of the said counties, and not certified by the sheriff* alone without due election.' The petition goes on to pray that sheriffs may be elected annually and not made by procurement (*brocage*) in the king's court. With reference to the election of knights, the answer is, 'The king wills that they shall be elected by common assent of all the county (par commune assent de tout le contee).'†

There can be no doubt that this answer was an authoritative declaration of the law established by antient usage, that knights of the shire were to be elected in full county court. It is remarkable that this important determination was not recorded in a statute. It is still more remarkable, and highly characteristic of the mode in which the fundamental institutions of the English government have been established, that until the enactment of 8 Henry IV. (A.D. 1406), to be considered hereafter, not one statute was made regulating the election of representatives. Thus a period of nearly two centuries and a half from the first convocation of a complete House of Com-

* In Prynne's fourth part of a 'Brief Register of Parliamentary Writs,' p. 259, there are two writs, which give a curious specimen of the malpractices of sheriffs about this time. The first is a writ to the sheriff of Lancaster, dated either 36 or 37 Edward III., commanding an investigation in the county court, whether the last election of knights of the shire had been duly conducted. The sheriff is commanded to institute 'in your full county court, respecting the said election, diligent deliberation and inquiry with the milites and other good men of your county whether Edrus Laurence and Matthew de Risheton, who in our writ of parliament directed to you were returned for knights of the shire, were elected, or others.'

To this the sheriff made no answer. It appears that Edrus was the deputy of the sheriff of Lancashire, and he had simply returned himself. A second writ, addressed to the justices of Lancashire, recites that he had concealed the former writ and disobeyed it, and commands them to summon the milites and other good men of the county, and to inquire into the premises, and to inform the king in chancery of the result of the inquiry.

† 2 'Rot. Parliament,' p. 355.

mons elapsed before any Act of Parliament was passed regulating the constitution of that assembly.

In the latter part of the reign of Edward III. the power of the commons increased greatly. They strenuously resisted inordinate taxation, and boldly remonstrated with the king upon his choice of unfit advisers. They insisted that the king's council should be augmented by ten or twelve lords, prelates, and others who should be continually near his person, 'so as no great business might pass without the advice and assent of six or four of them at least, as the case required.' To this the king assented, with the proviso that the chancellor, treasurer, and privy seal might execute their offices without the assent of any of the said councillors. In a further protestation the commons added, 'that if the king had always had about him loyal counsellors and good officers, he had now been rich in treasure, so that he should not have needed so much to have charged his subjects with so great subsidies or talliages.'*

The reign of Richard II. was characterised by a constant succession of struggles between the commons and the executive government. The king, who ascended the throne when he was a boy eleven years of age, was surrounded by evil counsellors, who were frequently guilty of gross malversations. The reign is distinguished by frequent impeachments of great officers of state by the House of Commons, and finally that body concurred in the deposition of the king, who was induced to execute a formal renunciation of the crown. These are, however, matters of general history, and are here mentioned merely as illustrations of the position and authority which the House of Commons assumed during the latter part of the reign of Edward III., and maintained with increased energy after his successor came to the throne.

Though the law of parliamentary elections was subject to no material changes during the sway of Richard II., we find at this period one or two valuable records of the constitutional doctrines then recognised. A petition of the commons, in the second year of Richard II., deserves consideration, because it shows very clearly what classes were deemed to be represented by knights of the shire. The document may be translated as follows: 'Also the commons pray that, whereas their expenses are ordered by writ of our lord the king, directed to the sheriffs of every county, to be levied according to the purport of the said writ directed to them, to the use of the knights of the

* 1 'Parliamentary History,' p. 141.

parliament of our lord the king there being; that their said expenses are assessed upon every town of the said counties rateably;* whereas some towns are held of the king, and will pay nothing though their tenure is not of antient demesne of our lord the king; and some towns are within franchises, and [held] of peers of the realm who hold by barony, which will pay nothing because their lords are at parliament for themselves and their men in their own person, and take the expression "their men" so largely that, though a lord has in one town but four or five bondsmen, and a hundred or two hundred who hold freely or by court roll, and are free of body, yet they will not [pay] the said expenses, so that the whole sum, by that cause reduced and not levied, is thereby diminished in the payment of the expenses of the said chivalers, to their great loss. For which, they pray redress.' The answer is: 'Let it be done as has been used in former times.'

On consideration, it will be observed that the commons here make two distinct complaints: Firstly, that towns which, though held of the crown, are not of antient demesne, do not contribute to the knights' wages. Secondly, that towns held of lords, though they contain great numbers of freeholders and free copyholders, do not contribute. With respect to the first subject of complaint, it is to be observed that the doctrine had long prevailed, that the antient demesnes of the crown, unless they were expressly charged, were not liable to parliamentary charges and grants. Probably it was considered that tenants of such lands were represented by the king in parliament, in the same way that tenants of barons were represented by them. And accordingly we have seen, in several former instances of grants made by parliament to the crown, that

* Item prie le Comune que par la ou lour despenses sont ordenez par Brief nostre Seigneur le Roi assignez as Visconts des chescuns countees, a lever selonc le purport du dit Brief a eux direct, a l'œps de Chivalers du Parlement nostre Seigneur le Roi illœques esteantz, la sont lour ditz despenses assis sur chescune ville des ditz countees selonc l'afferant, par la ou le uns villes sont tenuz du Roi, & riens ne veullent paier coment que lour tenure ne soit d'ancien demesne nostre Seigneur le Roi; & les unes villes deinz Franchises, and des Pieres dei Roialme qui teignent par Baronie qui rienz ne veullent paier a cause que lour seigneurs sont au Parlement pour eux & lour hommes en propres persone et preignent si largement cest parol leur Homes . . . . . coment . . . . . ad en un ville que quatre ou cynk bondes & centz ou deux ce ntz qui teignent franchement ou par roulle des Courtes & sont frank du corps unqore ner veullent . . . . dites despenses issint que toute la somme par celle cause abregge & nient leve si est recoupe en paiement des despenses des ditz chivalers a grant damage . . . . a eux. Dont ils prient remede.

Ent soit fait ad este use devant ces heures.

when royal demesnes were intended to be charged, they were expressly mentioned. The lands of antient demesne were, as we have already explained, ascertainable by 'Domesday' and other antient records.

The first complaint of the commons is, that lands acquired by the crown at a later period (probably by escheat, among other causes) claimed the like privilege with antient demesnes. The second complaint obviously assumes that freeholders and *free copyholders* of lords of parliament ought to contribute to the knights' wages. But the commons do not extend their claim to persons who were not personally free. We have thus a clear exposition of the doctrine that knights of the shire represented free *men*, whether their tenure were freehold or copyhold.*

At length, in 1388, a compromise was effected with respect to the exemptions of which the commons complain in the foregoing petition, and several others. By a statute (12 Rich. II., c. 12) it was provided that the expenses of knights coming to parliament for the commons of counties should be levied 'as it hath been used before this time; joining to the same, that if any lord, or any other man, spiritual or temporal, hath purchased any lands or tenements, or other possessions, that were wont to be contributory to such expenses before the time of such purchase, the said lands, tenements, and possessions, and the tenants of the same, shall be contributory to the said expenses, as the said lands, tenements, and possessions were wont to do before the time of the same purchase.' It is observable that nothing is said here about freeholders. The contributories are to be the tenants generally of the lands which were formerly chargeable with knights' wages.

The only other transaction of this reign which is very material to the present inquiry is the statute (5 Rich. II.,

* The 'Report on the Dignity of a Peer' (vol. i. p. 336) makes great difficulties about this petition. The writers of the report have a preconceived theory that the representation of boroughs was originally confined to those which were of antient demesne, and that copyholders were not represented by knights of the shire. Accordingly, the writers are much perplexed by the language of the petition. In the passage referring to copyholders, the qualification '*who are free of body*' (frank du corps) is a key to the meaning of the petition; but this expression is entirely omitted in the translation by the writers of the report. They get over their difficulty by suggesting 'that the commons had no clear conception of any principles on which representation was first instituted, in whom the right of electing representatives was vested, or who ought to be charged with the wages, and on what ground.' The commons in the reign of Richard II. had a direct personal interest in the matters discussed in their petition. Possibly, they were as well informed on the subject as their commentators after a lapse of four centuries and a half.

stat. 2, c. 4), which provides that lords, knights, citizens, burgesses, and others duly summoned to parliament shall attend on pain of amercement for their default. The latter part of the statute enacts that, 'If any sheriff of the realm be from henceforth negligent in making his returns of writs of the parliament, or that he leave out of the returns any cities or boroughs which be bound and of old time were wont to come to parliament, he shall be punished in the manner as was accustomed to be done in the said case in times past.'

This enactment tended to render permanent the constitution of the House of Commons. The sheriffs were prohibited from arbitrarily omitting from their returns cities and boroughs which had been theretofore bound to send representatives, and the distribution of the parliamentary franchise was fixed in the form determined by long established custom. Thus, by the end of the fourteenth century, the constitution of parliament had become definitively settled in all essential particulars. All the antient parliamentary boroughs were to send representatives. Every county was to elect knights of the shire, chosen in open county court by all the free inhabitants who were liable to taxation. The House of Commons had secured an absolute independence in making its grants to the crown. And lastly, it had become a fundamental law that the statutes of the realm were to be enacted by the king, with the assent of the prelates, earls, barons, and commons in parliament assembled.

CHAPTER VI.

THE COUNTY SUFFRAGE AFTER THE FOURTEENTH CENTURY.

Growth of the power of the Commons in the reign of Henry IV., 97.—*Grants settled by Conference between the two Houses*, 99.—*Statute against 'Lollerie,'* 101.—*First Statute regulating County Elections*, 103.—*All the inhabitants of Counties entitled to vote for Knights*, 103.—*Statute of Henry V., requiring Citizens and Burgesses to be residents*, 109.—*Imbecility of Henry VI., and anarchy in his reign*, 110.—*The Act giving the suffrage to forty-shilling Freeholders*, 113.—*The motives for which this Statute was made, and its effects*, 115.

After the fourteenth century great changes took place in the county suffrage. The period of the three Lancastrian kings, Henry IV. Henry V. and Henry VI. (A.D. 1399–1460) constitutes a distinct epoch in the history of parliament. In that period the right of voting for knights of the shire attained both its maximum and minimum limits. During the reign of Henry IV. the county suffrage was more extensive and general than it has ever since been. Shortly after the accession of Henry VI. the constituencies were suddenly and materially diminished by a law which remained undisturbed until the Reform of 1832.

Under the government of Henry IV. the power of the commons was progressively developed. In the first year of that reign they * petition the crown to the effect that no judge in concurring in any unjust measure should be excused by pleading the orders of the king, or even the dangers of his own life. In the second year they obtained the assent of the crown to an important modification of the method of drawing up statutes. Previously, the practice had been to have them compiled by the judges after the dissolution of parliament, from the petitions and answers in that assembly. This practice presented an opportunity of falsifying the intentions of the legislature ;† and in

* The petition was 'that the lords spiritual and temporal and the judges do not from henceforth plead in excuse that they durst not for fear of death to speak the truth.' *Answer*—'The king reputeth them all to be just, and that they will not give him counsel to the contrary; but if they do, let complaint be made.'—1 'Parliamentary History,' 281.

† A very gross case of this kind occurred in the preceding reign. A statute was passed in 5 Richard II. (stat. ii. c. 5, 'Authentic Edition of Statutes,' vol. ii. p. 25) authorising the imprisonment of preachers of heresies 'in strong prison till they will justify themselves according to the law and reason of the Church.' In

order to obviate that danger the commons petitioned, and the king assented, that all matters transacted in parliament should be engrossed before the departure of the justices.* In 8 Henry IV. at the petition of the commons, certain lords, prelates, and commons were appointed to be present at 'the enactment and engrossment of the rolls of parliament.' It was not, however, until the reign of Henry VI. that the practice of enacting laws in the exact language in which they passed the two houses was completely established.

The principal constitutional struggles in which the commons were engaged in the time of Henry IV. were these three—first, to assert their own independence in making grants of public money; secondly, to secure the political responsibility of the king's advisers; thirdly, to render the enormous property of the Church contributory to the expenses of the State.

The mode of making parliamentary grants in the fourteenth century differed utterly from that which is now observed. The antient practice in this respect has a high constitutional interest, but seems to have been but little noticed by modern writers. The lords, as we have seen, claimed for themselves and their dependent tenants exemption from the charge of knights' wages, on the principle that the upper house represented a distinct portion of the community. In accordance with the same principle that assembly made its own separate grants to the crown. But it was obviously necessary that the two houses should be in accord as to the amount of these grants, for neither would choose to be subject to a higher rate than the other. It was also deemed to be of great importance that the two parties should come to an agreement before their proposals were disclosed to the crown; and also the commons from an early period exhibited an anxiety that in the negotiations between the two houses the first offer should be made by the lords, and not by themselves. Each estate considered it a practical advantage to obtain a knowledge of the dispositions of the other before disclosing its own.

These observations will serve to explain and connect the following brief notes of some negotiations between the two houses

the next year ('Rot. Parl.' 6 Richard II. vol. iii. p. 141) the Commons complain in Parliament that this statute was made without their assent and demand its repeal: to which the king assented. Coke says (Fourth Institute, p. 51) that when this pretended act was passed Robert Braibrooke, Bishop of London, was Lord Chancellor: apparently the enactment was procured by his influence. Coke cites other instances of statutes passed in an unconstitutional manner.

† 3 'Parl. Rolls,' 7 & 8 Hen. IV. p. 585.

in the fourteenth century. As far as I am aware, the history of the contest has not been narrated by writers upon constitutional and parliamentary law. In 25 Edward III. A.D. 1352, the king proposes that the commons shall elect twenty-four or thirty of their body to confer with certain lords, whom he will send to them, respecting the grant to be made; and that the rest shall assemble in the Chapter House of Westminster, and receive the report of the conference. The commons, however, will not assent to this, but the whole body comes before the prince and lords on a subsequent day, and after long deliberation, and an adjournment, present a roll containing the aid they had agreed to grant.*

In 47 Edward III. certain bishops and lords are appointed to treat with the commons in the Chamberlain's Chamber respecting the grant. After a consultation continued two days, the king, lords, and commons reassemble, and the latter deliver a grant 'in a schedule written and indented without seal.' †

In 50 Edward III. 51 Edward III. and again in 1 Richard I.‡ the method was adopted of appointing a committee of lords to confer with the commons respecting the grant. But in the next year the lords object to this course, as an unjust innovation which placed them at a disadvantage. To 'the request that five or six prelates and lords may come to the commons to treat with them about the charge,' the lords answer that they neither ought to, nor will do it; for that the practice and manner had never been but in the last three parliaments. But they say and avow that it had been the custom for the lords to choose of themselves a small number of six or ten, and the commons as many of themselves, to treat together *in secret*, and then report what they had done to their companions; and 'according to this method the lords will act, and not otherwise.' § The commons assented at that time, that only a small number of lords and commons shall be selected. Shortly afterwards (5 Richard II. A.D. 1381) a committee of certain lords named by the commons is sent, at their request, to confer with them. After some conference they pray 'that the prelates by themselves, the lords temporal by themselves, the knights by themselves, the justices by themselves, and the other estates singly may be ordered to treat about the charge, and that their advice may be reported to the commons.' The king, however, refuses to accede to this arrangement. 'The antient custom and form

* 'Rotuli Parl.' vol. ii. p. 237. † 'Rot. Parl.' vol. ii. p. 316.
‡ 'Rot. Parl.' vol. ii. p. 322 and p. 363, and vol. iii. p. 5.
§ 'Rot. Parl.' vol. iii. p. 36.

of parliament had been,' he replies, 'that the commons should first report their advice on the matters assigned to them to the king and the lords first, and not the contrary.'* Evidently in this process of bargaining, it was considered disadvantageous to be compelled to take the first move. In subsequent years we have several instances of committees of the lords sent to the commons to confer about the grant. This was apparently the general practice; and it was continued in the following reign of Henry IV.

But in the ninth year of that reign we find a remarkable instance—probably the earliest—of an open dispute between the two houses; in which the commons manifested great boldness, and vindicated their independence against the king and the house of lords. In 9 Henry IV. A.D. 1407, the commons complained on account of the lords making the king several times privy to their debates on the subsidy. The king having assembled the upper house, had required them to state what aid they thought necessary for the public service; to which the lords had made reply. This communication gave great offence to the commons, who affirmed the proceeding 'to be in prejudice and derogation of their liberties.' The protest was successful. The king, with the assent of the lords, made an ordinance declaring that 'the lords on their part, and the commons on their part, shall not make any report to the king of any grant by the commons granted, and by the lords assented to, nor of the communications of the said grant before the lords and commons be of one assent and accord; and then in manner and form as has been accustomed, that is by the mouth of the speaker of the commons.'†

The victory was substantially with the lower house, and tended to confirm their authority, especially with reference to the public revenue. The growth of their power is similarly shown in their reiterated efforts to regulate the administrative government. In 5 Hen. IV. (A.D. 1404) on the petition of the house of commons, the king's confessor and three other members of the royal household were removed, and a committee of the lords was appointed to make further regulations of offices under the crown.‡ In 8 Hen. IV. (A.D. 1406) § the speaker of the house of commons came again before the king and lords, and required in the name of the commons, that all the lords of the council might be sworn to observe certain articles which they had drawn up for the better regulation of the public affairs of the kingdom. The king accordingly caused all the offices of

* 'Rot. Parl.' vol. iii. p. 100. No. 16.
† *Ibid.* p. 611.
‡ 1 'Parl. Hist.' 291.
§ *Ibid.* 303.

his household, and all of his courts of justice, to be sworn upon these articles which related, among other things, to the application of the royal revenue, the dispatch of petitions addressed to the king's council, and the fees and duties of the great officers of state. The Parliamentary History commenting upon this document observes, 'whoever considers well the foregoing articles delivered by the speaker, will find that there is scarcely a trifling one among them: which evidently shows that the commons of England were neither knaves nor fools in those days. Nor was the king less obliging and condescending on his part than the commons had been resolute and presumptive upon theirs; not only suffering the said articles which struck sufficiently at his prerogative to pass into a law, though but a temporary one, but also compelling the archbishop, with the rest of the council, to swear to the observance of them.'

But probably, of all the acts of the commons in this reign, the most meritorious was their resistance to the religious persecution of the Lollards promoted by the clergy. In the earlier part of the reign, an enactment for the punishment of heretics (2 Hen. IV. c. 15) was passed in an unconstitutional manner without the assent of the Commons. Cotton remarks, 'that the printed statute differs greatly from the record, not only in form, but much more in matter, in order to maintain ecclesiastical tyranny.' His publisher Prynne has this note upon it, 'that this was the first statute and butcherly knife that the impeaching prelates procured or had against the poor preachers of Christ's Gospel.'*

The statute as it stands in the statute-book provides that heretics shall be judged by the ordinary; after a heretic is pronounced relapsed, he is to be delivered to the sheriff's officers to be burned to death. The preamble of this atrocious enactment, which is utterly repugnant to the common law of England, states, that it was passed on the petition of the clergy, and does not refer to the commons. The petition of the clergy is closely followed, except that where the Act prescribes burning as a cure for heresy, the corresponding passage of the petition proposes that the sheriff's officers shall receive the relapsed heretics, 'and further do what is incumbent upon them

* Exact Abridgement of the Records collected by Cotton, revised by Prynne. Lond. fol. 1657, p. 409. Prynne's statement is not quite correct. There was an earlier act against preachers, 5 Richard II. (mentioned at the beginning of this chapter). Both acts, though passed in an unconstitutional manner, seem to have been enforced.

in that respect.'* The exquisite sensibility of the petitioners prevented them from giving expression to a decree of death.

The petition of the commons was very different. The following is a translation of it: 'Item—The commons pray that, when any man or woman, of whatever estate or condition, is taken and imprisoned for "Lollerie," he may be forthwith put to his answer, and have such judgment as he has deserved, to the example of others of that evil sect to speedily cease their evil preachings, and to hold them to the Christian faith.' The commons pray not that any new punishment or process may be devised, but that persons in prison for Lollerie may have speedy trial and judgment according to law. The object of this petition was probably to procure for the Lollards protection against protracted imprisonment, such as that authorised by the statute of 5 Richard II., mentioned at the beginning of this chapter.

Ten years after, 11 Hen. IV. (A.D. 1410), the commons prayed that persons arrested under the statute passed at the request of the clergy in the second year of the reign 'might be admitted to bail and to make their defence freely and without impediment, in the county in which they were arrested, and that *such arrest should be made in due form of law*.' The king, however, was unwilling to offend the clergy, who were very powerful, and rejected their petition.†

To the commons of the reign of Henry IV. preeminent honour is due for their services in establishing principles which are now esteemed fundamental parts of the British constitution. While they firmly and successfully asserted their own independence in making public grants, they respected that of the house of lords, and discreetly refrained from interfering with the distinct privileges of that assembly. Their celebrated articles for the regulation of the king's household and officers of state were limited to the correction of manifest abuses—malversation, misappropriation of public money, and delays of justice—but they did not attempt to infringe upon the royal prerogative of appointing the ministers of the crown. If they failed in vindicating the principle of religious toleration, and in resisting the enormous aggrandisement of the Church, their failure is attributable, not to their lack of zeal and courage, but to the overwhelming power of the clergy and the intolerance of the age.

* Et ulterius agant quod eis incumbit in ea parte.—'Rot. Parl.' vol. iii. p. 468.

† 'Rot. Parl.' vol. iii. p. 626.

A like spirit animated their more successful endeavours to improve the constitution of their own body. There are more important statutes of Henry IV. relating to the election of members of parliament than of any previous reign. In 7 Hen. IV. (A.D. 1406) an act was passed* which had the practical effect of greatly enlarging the county suffrage. This law is so material to our subject that it must be given *in extenso*.

'Item, our lord the king, at the grievous complaint of his commons in this present parliament, of the undue election of knights of counties for parliament, which be sometime made of affection of sheriffs and otherwise against the form of the writs directed to the sheriff, to the great slander of the counties and hindrance of the business of the commonalty of the said county:

'Our sovereign lord the king, willing therein to provide remedy, by the assent of the lords spiritual and temporal, and commons in this present parliament assembled, hath ordained and established: That from henceforth the election of such knights shall be made in the form as followeth, (that is to say):—

'At the next county to be holden after the delivery of the writ of the parliament, proclamation shall be made in full county court of the day and place of the parliament; and that *all they that be there present, as well suitors duly summoned for that cause as others* (qe toutz ceux qe illoeqes sont presentz sibien suterez duement somonies pur cele cause come autres) shall attend the election of the knights for the parliament, and then in full county they shall proceed to the election freely and indifferently notwithstanding any commandment or request to the contrary; and after they be chosen, the names of the persons so chosen (be they present or absent) shall be written in an indenture under the seals of all of them that did choose them, and tacked to the same writ of the parliament; which indenture,

* The commons had before this time entered upon a resolute course of opposition to undue interference with the liberty of elections. The 19th of the articles exhibited in Parliament against Richard II. stated that 'Although by the statute and custom of his realm in the calling together of every parliament, his people in the several counties of the kingdom ought to be free in choosing and deputing two knights to be present in such parliament for each respective county, and to declare their grievances and to prosecute such remedies thereupon as to them shall seem expedient; yet the aforesaid king, that in his parliaments he might be able more freely to accomplish the effects of his headstrong will, did very often direct his commands to his sheriffs that they should cause to come to his parliament as knights of the shire certain persons by the king named.'—'Rot. Parl.' vol. iii. p. 420.

so sealed and tacked, shall be holden for the sheriff's return of the same writ touching the knights of the shire.

'And in the writs of the parliament to be made hereafter this clause shall be put: "Et electionem tuam in pleno comitatu tuo factam distincte et aperte sub sigillo tuo et sigillis eorum qui electioni illi interfuerint nobis in cancellaria nostra ad diem et locum in brevi contentos certifices indilate;" [and your election made in your full county court, distinctly and openly under your seal and the seals of those who shall have been present at that election, you certify without delay to us in our chancery at the day and place contained in the writ].'

It appears by the preamble of this important enactment, that the occasion of it was the grievous complaint of the commons of undue elections made by the sheriffs from partiality and other causes. The nature of the grievance further appears from the direction that elections are for the future to be made freely and indifferently, notwithstanding any request or commandment to the contrary. In the preceding reign of Richard II., a practice of undue interference with elections had been commenced, and had been made one of the articles of accusation upon which the deposition of that king was founded.

Next we find it provided that proclamation is to be made in full county court of the day and place of the parliament. To this it may be added, that in the contemporaneous articles for the regulation of the royal household of Henry IV., to which frequent reference has been made, it was provided (Art. 22) 'that all the sheriffs, before the election of knights of the shire, shall, by open proclamation in their several counties, give fifteen days' respite to the time and place.'*

The electors are defined to be 'all they that be present, as well suitors duly summoned for the same cause as others.' A very important question arises on the meaning of this word 'others.' Does it mean other causes, or other persons? Were the electors to be all persons present as well suitors as other persons? or were they all suitors summoned for that cause or for other causes? If the latter interpretation be adopted, suitors only were to have the suffrage. A little consideration will show that this latter interpretation cannot possibly be correct. If we understand 'others' to mean other causes, we must suppose that *some* of the suitors were summoned to the election and some for other purposes. Hence we have to suppose that the summons of suitors to attend the election was partial only. For if all of them were convened for that pur-

* 1 'Parl. Hist.' p. 304.

pose, there were no 'others' of their number who could be convened for anything else. But we know that the summons to the election was perfectly general. The law distinctly required that it should be so; and it would be absurd to provide that the electoral summons should be addressed to only a part of the suitors, and yet that the rest of their body who were present in the county court should be also authorised to vote. We are therefore forced to the conclusion that 'others' means other persons. The manifest intention of the clause is, that all persons present in the county court, whether suitors or not, should take part in the choice of knights of the shire.

As the construction of this statute is of vital importance in the history of the suffrage, a repetition of the foregoing argument, in a somewhat different form, may be excused.

There are, then, two modes of construing the words which describe the voters at county elections. They were either (1) All suitors summoned for that cause and any other *causes*; or (2) All suitors summoned for that cause and any other *suitors*. The second interpretation assumes that there were other suitors besides those summoned to the election. In other words, that the summons to the election was not general, but addressed only to some of the suitors. This we know to be contrary to the fact, and it is therefore demonstrated that the first interpretation is the correct one.

The language of other parts of the enactment is consistent with this interpretation. A passage in Latin which is required to be inserted in the parliamentary writ directs that the return shall be certified under the seals of those who shall have been present at that election—eorum qui electioni illi interfuerint. The county court was an open court, and was attended, certainly, by many auditors who were not necessarily suitors. It was held on great occasions—as it is to this day—in open unenclosed places, where any exclusion of persons disqualified from voting would have been impracticable. There was no machinery for scrutiny of votes. The election was that which we now call the nomination, and the only practicable way of ascertaining the will of the majority in the case of a contest was by show of hands, or by some similar rough process.

The meaning here assigned to the statute 7 Henry IV. is conclusively confirmed by reference to the parliamentary writs issued immediately after that date. We find in them a considerable variation from the language of the similar instruments of an earlier date. Thus the writs of 7 Henry IV., just *before* the statute was passed, merely direct each sheriff, 'That of

your county you cause two knights girt with swords, of the more fit and discreet of your county, and of every city of that county two citizens, and of every borough two burgesses of the more discreet and sufficient men to be elected, and to come at the said day and place.' * But when we turn to the like instruments immediately after the enactment, there is a material variation in the language employed: the process of election in counties is now described. Thus in 8 Henry IV. each sheriff is commanded,† 'That proclamation being made in your next county court to be holden after the receipt of this writ, of the day and place aforesaid, you cause two knights, girt with swords, of the more fit and discreet of the said county, and of every city of the said county two citizens, and of every borough two burgesses of the more discreet and sufficient to *be freely and indifferently elected by them who shall attend upon that proclamation*, according to the form of the statute in our last parliament in that behalf made and provided; and the names of the same knights, citizens, and burgesses so to be elected, to be inserted in certain indentures to be made between you and those who shall attend such election, whether the persons so to be elected be present or absent.'

There is not a word here about the election being confined to suitors. The sheriff is to make proclamation respecting the election. The statute describes this announcement. It is to be made in open county court, and merely relates to a time and place; and therefore it could not be addressed to any particular class of persons. *All who shall attend upon that proclamation* are to freely and indifferently participate in the election. Moreover, this is to be done in accordance with the late statute; so that we have here an authentic exposition of that enactment. Can it be imagined that if the election were to be confined to any

* Quod de comitatu tuo duos milites gladiis cinctos magis idoneos et discretos comitatus predicti et de qualibet civitate comitatus illius duos cives et de quolibet burgo duos burgenses de discrecioribus et magis sufficientibus eligi et eos ad dictos diem et locum venire facias.—'Rep. on Dig. of a Peer,' vol. iv. Appendix, p. 794.

† Quod facta proclamatione in proximo comitatu tuo post receptionem hujus brevis tenendo de die et loco predictis, duos milites gladiis cinctos magis idoneos et discretos comitatus predicti et de qualibet civitate comitatus illius duos cives et de quolibet burgo duos burgenses de discrecioribus et magis sufficientibus libere et indifferenter per illos qui proclamacioni hujusmodi interfuerint juxta formam statuti in ultimo parliamento nostro editi et provisi eligi ac nomina eorundem militum civium et burgensium sic eligendorum in quibusdam indenturis inter te et illos qui hujusmodi eleccioni interfuerint inde conficiendis licet hujusmodi eligendi presentes vel absentes fuerint inseri.—'Rep. on Dig. of a Peer,' vol. iv. p. 802.

limited or privileged body, this general and unrestricted language could have been employed—that no direction would have been given to exclude unqualified persons?

The county court was open to all comers. In the Saxon times, as we have abundantly shown in a previous chapter, it was often attended by large promiscuous gatherings of the people of all classes: and there is not a particle of evidence that it had become a select body in the fourteenth century. On the contrary, the statute-book, at a much later period than that now under consideration, distinctly shows that the court was open to every one. An act passed about forty years later, 23 Henry VI. c. 10 (A.D. 1444) makes the following provision for levying the wages of knights of the shire. When the time comes for assessing these charges, the sheriff 'shall make open proclamation that the coroners and every chief constable of the peace of the said counties, and the bailiffs of every hundred or wapentake of the same county, *and all others who wish to be at the assessing of the wages* (et toutz autrez qui voillent estre a le assesaunce de lez gagez) of the knights of the counties, shall be at the next county court there to be holden.' The act goes on to provide that the sheriff shall assess the wages in the presence of *those who shall come at that time and of the suitors of the said counties then being there* (en presence diceux qui a celle temps viendront et de lez suitours dez ditz counteez adonques esteantz la). Can any words more clearly show that the county court was open to everybody who chose to attend it?

These considerations show the importance of the preliminary investigation, essayed in former chapters, respecting the constitution of this tribunal. If the foregoing conclusions be accepted, it follows that the whole body of the inhabitants of the county were by the statute of 7 Henry IV. confirmed in their right to participate in the choice of knights of the shire. The statute, as we shall presently show by reference to another act made four years later, was not a creation of any new suffrage, but a declaration and confirmation of that which had long existed. We have already referred to the authoritative declaration made seventy years previously in answer to a petition of the commons respecting the election of knights of the shire (50 Edward III. A.D. 1376), 'The king wills that they shall be elected by common consent of all the county,' and even that declaration was but an exposition of the then antient law.

Lastly, this act of 7 Henry IV. introduces a new statutory provision as to the mode in which sheriffs were to make their

returns. Previously the return was usually a statement annexed to the writ, and signed by the sheriff, stating the names of the persons returned, and of their mainecaptors, or sureties for their due appearance in parliament. Henceforth it was no longer in the power of the sheriff to make his return privately without the cognisance of the electors. The result of the election was to be signified by an indenture, signed and sealed by the electors as well as by himself; and that form of return by indenture is continued to the present day.*

This remarkable legislation was followed up four years afterwards by an enactment imposing severe penalties upon the sheriffs for making false returns. The law of 7 Henry IV. had imposed no penalties, and therefore was violated with impunity. But in 11 Henry IV. (A.D. 1410), the commons present a petition in parliament complaining of the non-observance of the former act respecting knights of the shire. They represent 'that the statute was made in conservation of the franchises and privileges of the election of the knights of the shires, and throughout the realm, and by the king's progenitors, and by himself, from parliament to parliament, confirmed for time of which memory did not run.' The answer is: 'That the statute mentioned, and other statutes of the king's progenitors before made in the same matter, shall be observed.' On this petition the statute is made 11 Henry IV. c. 1, by which sheriffs who are guilty of false returns are to be fined £100 for each offence, and the knights so returned are to lose their accustomed wages. The petition on which this enactment is founded has a great historical value, for it shows that the right of suffrage declared by the statute of 7 Henry IV. was the antient usage of the kingdom. It is an utter mistake to suppose that the great law of 7 Henry IV. created a novel system of suffrage. The parliament itself recorded four years afterwards that the franchises in question existed in the reigns of the king's progenitors, 'for a time of which memory did not run.'

In the brief reign of Henry V. the most important transaction with reference to the constitution of parliament was an

* To preclude a surmise that the sealing by the electors had the effect of excluding persons of inferior condition, who might be supposed not to possess seals, the reader may be reminded of the passage from Fleta, cited in a former chapter, which states that inquisitions of felonies might be taken, not only by freemen, but also 'by some of the more discreet and lawful villans having seals.' The use of seals in the fourteenth century is shown by Prof. Rogers ('History of Agriculture and Prices,' vol. i. p. 120) to have been very common among persons of humble condition.

enactment requiring that knights of shires, and the representatives of cities and boroughs, should be *residents* within the counties, cities, and boroughs which they represented. By 1 Henry V. c. 1, it is provided 'that the knights of the shires which from henceforth shall be chosen in every shire be not chosen unless they be resident within the shire where they are chosen, the day of the date of the writ of summons of the parliament; and that the knights and squires and others which shall be chosen of those knights of the shires be also resident within the same shires in manner and form as is aforesaid: and moreover it is ordained and established that the citizens and burgesses of the cities and boroughs be chosen men citizens and burgesses resiant, dwelling, and free in the same cities and boroughs, and no other in any wise.'

The language of the latter part of this enactment is somewhat peculiar. The original is *qe les citeins et burgeis soient esluz hommes citeins et burgeises reseauntz demurrauntz et enfranchises en mesmes le cites et burghs et nulles autres en nulle manere.* These words define the qualification of the representatives, not of the electors in boroughs: and on reference to the rolls of parliament, it appears that the parliamentary petition on which this enactment is founded is to the same effect, though slightly different in form.

There is, however, one very material difference between the petition and the statute. The former, with reference to county elections, prays that they 'may take place in the presence of the sheriff for the time being, in manner and form aforesaid, and not by the voice, nor assent, nor commandment of those who are absent.'* All the other articles of the petition are dealt with in the reply, and are embodied in the statute. But to this article no answer is given. If it had been enacted, the effect would have been to prevent the attorneys of suitors in the county court from voting on their behalf in the election of knights of the shire.

In the reign of Henry VI. the nation had fallen upon evil times. Political power was divided between two hostile aristocratical factions—the Lancastrians and the adherents of the house of York, whose bloody feuds kept the country in a state of anarchy. The voice of the commons was drowned by the din of arms. The king came to the throne a child of nine months old, and during a great part of his reign was a mere

* 4 'Rotuli Parl.' p. 8.

puppet in the hands of others, who ruled in his name. For some years after his accession the country was governed by the protector, or regent, Humphrey, Duke of Gloucester; and Beaufort, Duke of Exeter, and the Bishop of Winchester were appointed by parliament governors to take care of the king's person and education.*

Constant dissensions occurred between the bishop and the Duke Humphrey, the protector assuming absolute authority, and the prelate resisting his pretensions. We have a characteristic illustration of the lawless spirit of the times in the account of a parliament held in Leicester in 4 Henry VI. (A.D. 1427), 'at which time and place, being assembled in the great hall of the Castle of Leicester, much care had been taken to prevent any tumults between the great trains of the protector and bishop, by strictly prohibiting any person whatsoever to come thither with swords or any other warlike weapon; which order, though it was literally observed, yet the lords and their attendants came armed with batts or clubs on their shoulders, from whence this meeting got the name of the "parliament of batts."' †

In 8 Henry VI. A.D. 1429 the king was crowned, and the protectorate nominally dissolved, but the Duke of Gloucester retained his power, and in the following year (9 Henry VI. A.D. 1431) the writs for the assembly of parliament were issued by him under the style of guardian or keeper of England, and he opened the session, seated in his chair of state, in the Painted Chamber at Westminster. But the rivalry between him and the bishop, who had been raised to the dignity of a cardinal, continued, and parliament was several times called upon to interpose in their quarrels.

Henry VI. was imbecile or insane all his life. A letter in the Paston Collection gives a very natural and affecting picture of his recovery from one of his severe attacks of mental disease, which, from the circumstances here related, appears to have continued from October 1453 till Christmas 1454, and to have been attended by total loss of memory. The letter, which is addressed to John Paston, Esquire, a gentleman of Norfolk, by his cousin Edmund Clere, is dated 10th January, 1454, and contains the following passage (the spelling modernised):—

'Blessed be God! the king is well amended, and hath been since Christmas Day; and on S. John's Day, commanded his almoner to ride to Canterbury with his offering, and commanded his secretary to offer at S. Edward's.

* 1 'Parl. Hist.' p. 346.

† 1 'Parl. Hist.' p. 354.

'And on the Monday afternoon, the queen came to him and brought my lord prince with her, and then he asked what the prince's name was, and the queen told him Edward; and then he held up his hands and thanked GOD thereof.

'And he said he never knew him till that time; nor wist not what was said to him, nor wist not where he had been whilst he had been sick till now; and he asked who were godfathers; and the queen told him, and he was well apaid [*content*].

'And she told him that the cardinal was dead; and he said he knew never thereof till that time; and he said one of the wisest lords in this land was dead.

'And my Lord of Winchester, and my Lord of S. John's were with him on the morrow after Twelfthday, and he spake to them as well as ever he did; and when they came out they wept for joy.

'And he saith that he is in charity with all the world, and so he would all the lords were.

'And now he saith matins of our Lady, and evensong, and heareth his mass devoutly.

'And Richard shall tell you more tidings by mouth.'*

In this familiar letter we have a touching picture of the unhappy king's condition, and the distraction of the times. For fifteen months he had continued in a state of unconsciousness, 'nor wist not what was said to him, nor wist not where he had been.' Of the birth of his own son, Prince Edward, he was ignorant for more than a year after the event.

It is not within the purpose of this work to pursue minutely the history of the reign, but it is necessary to make some reference to it in order to explain the character and results of contemporary legislation respecting the constitution of the House of Commons. The reign was almost entirely a succession of regencies, either formally or tacitly recognised. In 1433, the Duke of Bedford, who had been nominally supreme protector from the commencement of the reign, but who had long been in France conducting the war with that country, assumed a large share of the governing power by the consent of parliament.† In 1445 (23 Hen. VI.), by the management of the Earl of Suffolk, and others about the court, the king was married to Margaret, daughter of the King of Sicily, and thenceforward

* 'Paston Letters,' vol. i. p. 81. These letters were addressed by and to various members of the Paston family in the reign of Hen. VI. and two following reigns, and were collected and printed in 1786. The Pastons were gentlemen of distinction in Norfolk, where they had considerable property.

† 1 'Parl. Hist.' p. 370.

the queen and Suffolk, who was raised to the dignity of a duke, had a complete ascendency over Henry. The dominant court party plotted the ruin of Humphrey, Duke of Gloucester, the former regent, and in 1447 he was arrested and murdered. His old enemy, the Cardinal Bishop of Winchester, died a few months later; and for some time afterwards the queen and the Duke of Suffolk managed the kingdom without control.* Suffolk was impeached and sentenced to banishment in 1450 (28 Hen. VI.). On his way from England, the ship which conveyed him was overtaken by another English vessel, he was taken into a boat and decapitated. One of the Paston Letters which narrates his death refers to a mock trial of Suffolk, which is supposed to have taken place in the ship by which he was captured.†

Shortly afterwards there was another regency. In 1453 (32 Hen. VI.), the Duke of York sat as 'the king's lieutenant in his parliament,' and was appointed *Protector et Defensor Angliæ*. The end of the troubled career of Henry VI. was briefly this:— In 1455, the Duke of York raised an army, routed the adherents of the court at St. Albans, and took the king prisoner. In the same year the duke was again appointed protector. In 1460 he was attainted in parliament. Subsequently, his adherents fought a battle near Northampton, in which the king was a second time taken prisoner. Shortly afterwards the Duke of York made public claim to the crown by a bill exhibited in the House of Lords. In 1461, he was slain at the battle of Wakefield, together with 3,000 Yorkists; but very shortly afterwards that party was again triumphant, and his son, the new Duke of York, was proclaimed king under the title of Edward IV. For the next ten years Henry VI. remained in captivity. In 1470, a brief interruption of the royal authority of Edward IV. occurred. Henry was taken from the Tower and nominally restored to the throne, but his incapacity being avowed, the government was entrusted to a regency. About six months later the battle of Tewkesbury was fought, in which the Lancastrians were utterly defeated. A few days after the battle, Henry VI. died suddenly in imprisonment, and he was generally supposed to have been murdered.

The laws of this reign must be read by the light of these contemporary events. It may be safely assumed that every important transaction of parliament had some reference to the incessant struggles of the rival aristocratical factions.

In 8 Hen. VI. (A.D. 1429), an act was passed which marks

* 'Parl. Hist.' p. 383. † 'Paston Letters,' vol. i. p. 41.

an entirely new era in the county suffrage, by limiting that right to the class who are commonly called *forty-shilling freeholders*.

This statute, which was passed during the contentions between the Duke Humphrey and Cardinal Beaufort, presents a strong contrast to the legislation of the preceding reigns. The policy of the former parliaments had been to secure the whole body of the county population in the free and independent exercise of their electoral rights. The law of Henry VI., for the first time in our annals, imposed a property qualification, limiting the right of county suffrage to persons possessing freehold tenements to the value of forty shillings by the year, at least, above all charges or reprises.

The petition of the commons upon which this enactment is founded, deserves attention on account of the reasons assigned for the new law.

'Pray the commons of this present parliament that, Whereas, the elections of knights of shires elected to come to your parliaments in many counties of England have lately been made by too great and excessive number of people dwelling within the same counties; of whom the greater part are by people of little or no means, of whom each pretends to have an equivalent voice so far as relates to such elections with the most worthy knights or esquires dwelling in the same counties; of which homicides, riots, batteries, and divisions between the gentlemen and other people of the same counties probably will arise and be, if a convenient remedy be not provided in that behalf:

'That it may please your gracious lordship to consider the premises, and to provide and ordain by the authority of this present parliament, that the election of knights of the same counties within your realm of England to be chosen to come to parliament hereafter be made in each county by people dwelling and resident therein, of whom each has freehold (*frank tenement*) to the value of xl shillings by the year, at least, beyond the outgoings (*reprises*). And that those that be there chosen be dwelling and resident within the same counties. And those that have the greater number of them who can expend by the year xl shillings and upwards, as aforesaid, be returned by the sheriffs of each county, knights for the parliament by indentures sealed between the said sheriffs and the said electors. And that each sheriff of England have power by the said authority to examine upon the holy Evangelists each such elector how much he can expend by the year. And if any sheriff

return knights to come to parliament contrary to this ordinance, that the justices of assizes, in their session of assizes, have power by the said authority to inquire thereof. And if by inquisition that be found before the said justices, and the sheriff thereof be duly attaint, that then the said sheriff incur the penalty of £100 to be paid to our lord the king. And also that he be imprisoned for a year without bail or mainprise. And that the knights for the parliament returned contrary to the said ordinance lose their wages. Provided always, that every one who cannot expend xl shillings by the year, as aforesaid, shall not be in any manner an elector of knights for the parliament. And that in every writ issued hereafter to the sheriffs to elect knights for the parliament mention be made of the said ordinances.'

'Answer.—Let it be as is desired by the petition.' *

It will be observed that three several reasons are assigned for restricting the franchise; firstly, the too great and excessive number of electors; secondly, their pretension to have equal voice with knights and esquires; thirdly, the probability that homicides and disputes will arise between the gentlemen and the other people. The second and third reasons explain the first. The true grievance appears to have been not the mere number of the lower class of electors, but that their votes were of equal weight with those of persons of gentle ('*gentil*') condition. Parliament was also apprehensive that the two parties might come to blows—it is not alleged that they had already done so—but 'probably' divisions will arise between the gentry and the simple folk. We have this valuable piece of historical information that the legislature of the reign of Henry IV., though it did not expressly extend the suffrage, had the practical effect of increasing the number of voters. Can there be any doubt that the true motive of the petition just cited was to aggrandise the power of the upper classes? They were intent upon their feuds and took a deep interest in the political struggles of rival houses for supremacy: the common people, on the contrary, had no great zeal for these disputes, and probably understood but little about their merits. A parliament which represented them would concern itself to secure peace and to promote the arts of peace. A parliament which represented the upper classes would be chiefly busy with their contests.

The parliaments after this time were assembled at irregular intervals. In all the previous reigns from the accession of

* 'Petitions in Parl. 8 Hen. VI.;' 'Rotuli Parl.' vol. iv. p. 350.

Edward II. they had met annually with very few omissions. Now they were frequently intermitted for two or three years together, and these assemblies when they met were principally occupied in making enormous grants of public money and loans; in impeachments and counter-impeachments; in legislation which either did not interest the people or increased the burdens imposed upon them.

The Paston Letters give a clear insight into the operation of the new law respecting the county suffrage. The following letter was written by the Duchess of Norfolk to John Paston, apparently about 1455:—

'Right trusty and well beloved, we greet you heartily well; and for as much as it is thought right necessary for diverse causes, that my lord have at this time in the parliament such persons as belong unto him, and be of his menial servants; wherein we conceive your good will and diligence shall be right expedient; we heartily desire and pray you, that at the contemplation of these our letters, as our special trust is in you, ye will give and apply your voice unto our right well beloved cousin, and servants John Howard, and Sir Roger Chamberlayne, to be the knights of the shire; exhorting all such others as by your wisdom shall now be behoveful, to the good exploit and conclusions of the same.

'And in your faithful attendance, and true devoir in this part, ye shall do unto my lord and us a singular pleasure and cause us hereafter to thank you therefore, as ye shall hold you right well content and agreed with the grace of God, who have you ever in his keeping.

'Written at Framlingham Castle, the 8th of June.' *

To this estate had the House of Commons fallen that the Duke of Norfolk undisguisedly sought the return to parliament of 'such persons as belong to him and be of his menial servants.' An assembly so constituted was not likely to be animated by the spirit which prompted the parliaments of Henry IV. to boldly, firmly, and temperately reform the abuses of the royal household, and to resist the encroachments of the House of Lords on their independence in the grant of supplies. Knights of the shire elected by the 'great and excessive number of people,' which the statute of 8 Henry VI. was intended to reduce, were at least preferable to a Duke's 'menial servants.'

Another letter, by the Earl of Oxford to John Paston, written some time before 1455, is to the like effect.

* 'Original Letters written during the Reigns of Henry VI. &c.' edited by John Fenn, M.A. London, 1787, quarto, vol. i. p. 97.

'Right well-beloved,—I greet you well; and as touching for Tidings I can none, saving that my Lord of Norfoulk met with my Lord of York at Bury on Thursday, and there were together till Friday 9 of the clock, and then they departed; and there a Gentleman of my Lord of York took, unto a Yeoman of mine, John Deye, a token and a sedell [*schedule*] of my Lord's intent, whom he would have Knights of the Shire, and I send you a sedell closed [*schedule enclosed*] of their names in this same Letter, wherefore me thinketh (it) well done to perform my Lord's intent. Written the 18th day of Octr. at Winch, Oxenford.'*

This and the preceding letter were written about twenty-five years after the system of elections by forty-shilling freeholders was instituted; and the testimony thus afforded respecting the effect of that institution is not favourable. In the first of these letters the duke, who wants to have in Parliament 'such persons as belong to him and be of his menial servants,' has at least the grace to solicit the concurrence of the electors. In the second letter this formality is dispensed with, and a shorter course adopted. The Duke of York (Richard Plantagenet) and the Duke of Norfolk agree at a conference who shall be the representatives of Norfolk, and issue their instructions in a 'schedule' accordingly.

The power of the Duke of York to appoint members of parliament was well recognised. Thus in an earlier letter, written probably in 1450, by James Gresham to John Paston, the writer states that 'my master Calthorpe had writing from my lord of York;' and adds pithily, 'some folk ween that it is to the intent that he should be either sheriff or knight of the shire.'†

The following letter was written about seventeen years later (1472, 12 Edward IV.) to Sir John Paston by his brother:—

'Right worshipful Sir,—I recommend me to you, letting you weet, that your desire, as for the Knights of the Shire, was an impossible (thing) to be brought about; for my Lord of Norfolk and my Lord of Suffolk were agreed, more than a fortnight ago, to have Sir Robert Wyngfield, and Sir Richard Harcourt, and that knew I not till Friday last past. I had sent, ere I went to Framlingham, to warn as many of your friends to be at Norwich, as this Monday, to serve your intent, as I could; but when I came to Framlingham, and knew the

* 'Original Letters written during the Reigns of Henry VI. &c.,' edited by John Fenn, M.A. London, 1787, quarto, vol. i. p. 99.

† *Ibid.* vol. i. p. 93.

appointment that was taken for the two knights, I sent warning again to as many as I might, to tarry at home. . . . I sent to Yarmouth, and they have promised also to Doctor Aleyn and John Russe to be (Burgesses) more than three weeks ago.

'James Arblaster hath written a Letter to the Bailiff of Maldon, in Essex, to have you a Burgess there; how Jude shall speed let him tell you when ye speak together. . . . If ye miss to be Burgess of Maldon and my Lord Chamberlain will, ye may be in another place; there be a dozen towns in England that choose no Burgess which ought to do it. Ye may be set in for one of those towns and [if] ye be friended.'*

From this letter it appears that the nomination of knights of the shire for Norfolk was, at the date when it was written, in the hands of the Dukes of Norfolk and Suffolk.

A remarkable petition from one hundred and twenty-four freeholders of Huntingdonshire complains of the illegal conduct of an election of knights of the shire at Huntingdon in 29 Henry VI., and gives a very curious and interesting picture of the times. This petition, which is addressed to the king, recites the writs for the election, and states that 'at Huntington the Saturday next before Saint Luke's day the Evangelist now last passed, the under-sheriff of your said shire of Huntingtон, there in the pleyn shire did your said writ of elections to be proclaimed for the two knights of the said shire.' It is then alleged that the petitioners, 'with a three hundred mooe good cominers of the said shire,' named and chose for knights Robert Stoneham and John Stynecle. 'Notwithstanding these premises, there appeared be labour of diverse of Gentilmen of onher Shires and of your said Shire of Huntington, the nombre of a lxx. Freeholders comoners, naming Henry Gimber to be one of the said knights, which is not of gentill birth according to your said writ; and thereupon the under-sheriff went to examination according to the statutes rehersed in your said writ, and have xlvii. examined of forreiners and receants without interruption of us and few of them contributers to the knights' expenses. And when wee the Freeholders before named should be examined likewise, tho on the said Henry Gimber's part would not suffer us of our part to be examined and to give voys, thoue he might clearly yarely expend xx. mark without that we should have offended the peace of yowe our most doutye Soveraigne Lord; and soe wee departed for dread of the said inconveniences that was likely to be done of man-

* 'Original Letters written during the Reigns of Henry VI. &c.,' edited by John Fenn, M.A. London, 1787, quarto, vol. ii. p. 103.

slaughter. And what the sheriff will return in this behalf wee can have no notice.' The petitioners pray that the sheriff may be charged to return Stoneham and Stynecle.*

This petition, sealed by the one hundred and twenty-four freeholders, is annexed by the sheriff to his return, which is by indenture in Latin, and states that Nicholas Stynecle and other forty-shilling freeholders have elected Robert Stoncham and John Stynecle to be knights of the shire. The return is sealed by Nicholas Stynecle, the first named of the petitioners who complained of the undue conduct of the election. It thus appears that the sheriff took upon himself to redress the grievance complained of, by returning the knights for whom the petitioners claimed the election. Prynne remarks on this document, 'That this is the only clear declaration and record I have met with complaining against a sheriff giving of an oath and poll to the freeholders giving their voyces at an election of knights in former ages for the one side, and denying an oath and poll on the other side.' The record does not, however, justify this comment. The election was conducted by the under-sheriff, and it does not appear that he refused the oath and poll of the petitioners, but that they were prevented by the opposite party from voting, and 'departed for dread of the said inconveniences that was likely to be done of manslaughter.' It is remarkable that all the voters on one side were examined by the under-sheriff before any of the votes on the other side were given. The words, 'and when wee the freeholders before named should be examined in likewise,' tend to show that this was a regular practice at that period.

In 'The Complaint of the Commons of Kent, and Causes of their Assemblie on Blackheath,' during Cade's insurrection in 29 Henry VI. A.D. 1451, we have another proof of the political thraldom to which the people were subjected after the destruction of their antient rights of suffrage. One of the articles of this complaint is as follows:—'Item: The people of the said shire of Kent maie not have their free elections in the choosing of knights of the shire; but letters beene sent from diverse estates to the great rulers of all the countrie the which imbraceth their tenants and other people by force to choose other persons than the commons will is.'†

It is true that this is the language of men to whom history gives the character of rebels. But the document appears by

* Prynne, 'Brevia Parliamentaria,' p. 157.

† Hollinshed, vol. iii. (Ed. 1586) p. 633.

strong internal evidence to be a carefully considered and temperate exposition of grievances of which the complainants had practical experience.

The strongest proof, however, of the prevalent parliamentary corruption is to be found in the statute-book itself. An act 39 Hen. VI. A.D. 1460, in reference to the parliament held at Coventry two years previously, states that 'it was not duly summoned, and a great part of the knights for different counties of this kingdom, and many citizens and burgesses for different cities and boroughs who appeared there were named, returned, and accepted, some of them without due and free election, and some of them without any election, contrary to the course of the king's laws and the liberties of the commons of the said realm.'

Again, three years later, we find the next king, Edward IV., assigning the following reasons for the prorogation of a parliament which he had summoned. In writs addressed to the sheriffs, tested 25 Feb. 2 Edw. IV., he requires them to make a proclamation in their counties which contains this passage. 'By oure writtes we have called the commialte of oure said land by auctorite of such eleccion as accordeth with oure lawes and theire fredom and liberte yet natheless for so much as we understonde that thelleccion of knyghtes of right many of the shires of the same oure lande for the said parliament hath not by thordre of oure said lawes, but contrarie therunto, and also to oure peas, and the said fredom and liberte proceded right inordinatly: Whereof to grete and perlious inconvenience and evyll example in our said lande might grewe if the same parliament shuld have ben kepte.'*

These proofs are surely sufficient to show what benefits England reaped from the destruction of the old county franchise. From the degraded position to which it sank in the latter part of the reign of Henry VI., the House of Commons did not recover for more than a century and a half subsequently. The parliaments which sanctioned the Star Chamber in the time of Henry VII., which gave to Henry VIII. authority to issue proclamations having the force of acts of parliament, and which zealously supported Mary in her policy of burning heretics, were animated by a very different spirit from that of the early Plantagenet parliaments. How utterly the independence of the House of Commons was destroyed in the Tudor period may be inferred from the single fact that, in the reign of Edward VI., letters publicly addressed in the king's name to the sheriffs of all the counties state that 'Our pleasure is that where our

* 'Rep. on Dig. of a Peer,' vol. iv. p. 961.

privy council, or any of their jurisdiction in our behalf, shall recommend men of learning and wisdom, in such case their directions shall be regarded and followed.' And the sheriffs of several counties were desired to return certain persons recommended by name.*

In the following reign of Mary, the practice of royal interference in elections continued, and letters were addressed by the queen to the sheriffs commanding them to admonish the people to elect representatives 'of the wise, grave, and Catholic sort.'† The parliament so convoked repealed 'all statutes, articles and provisoes made against the see apostolique of Rome since the 20th of Hen. VIII.,' and revived the former acts against heretics. But even in the servile House of Commons of 1554 there were some independent members bold enough to raise an indignant protest against the domination of the crown. Thirty-nine members voluntarily left the house when they saw the majority inclined to submit to the court. The crown resented this separation, and directed the attorney-general to prosecute them in the Queen's Bench. Upon an information preferred against them there for departing without licence contrary to the king and queen's inhibition, six submitted to the mercy of the court and paid their fines. All the rest, among whom was the famous lawyer Plowden, traversed; but judgment against them was prevented by Mary's death.‡

In the following reign of Elizabeth, something of the antient independence of parliament reappeared. This spirit was manifested in a successful resistance to illegal grants of monopolies and other unlawful exercises of the royal prerogative. But it was not until the reign of James I. that the House of Commons recovered its old dignity. The protestation of the commons concerning their privileges in 1621, and the records of the committees which, under the guidance of Coke, Selden, Pym, and other illustrious and learned advisers, restored the antient course of election in many boroughs, comprise some of the fairest pages of our parliamentary history.

* 1 'Parl. Hist.' 599. † *Ibid.* p. 615.

‡ Coke's 'Fourth Institute,' cap. 1, where a copy of the 'information' containing the names of the thirty-nine seceders is given.

CHAPTER VII.

PROCEDURE AT ELECTIONS.

Elections were originally by show of hands, 121.—*This method common during the Tudor period,* 122.—*Right to a poll established in the reign of James I.,* 123. —*The form of returns,* 125.—*Burgesses returned by indenture in the County Court though not elected there,* 126.—*The parties to the indentures were only a few of the electors, but declared the will of the rest,* 127.

For a long time after the first institution of the House of Commons, the only method of voting at a contested election was by the view or show of hands. What is now termed the 'nomination' was then the only election. Until the passing of the statute of Henry VI. limiting the county suffrage to forty shilling freeholders there is not the slightest trace of any practice of polling the electors or of scrutinising their votes. And even after that period the old method was long retained even at county elections. There is strong evidence that the right to a poll was not firmly established until the time of James I.

In an action brought in the first and second years of the reign of Philip and Mary (A.D. 1554) by Sir Richard Buckley against Rice Thomas, formerly sheriff of Anglesea, the legality of elections by show of hands was affirmed. Buckley had been an unsuccessful candidate for the county of Anglesea at an election in the first year of Queen Mary's reign. He complained of a false return: one of the exceptions taken by him was that there had not been a poll, and that consequently the sheriff could not determine for certain the number of electors. Upon this point Staunford, J., one of the judges, said: 'As to the second point, it seems to me that he shall not be compelled to show the certain number of electors. For since he cannot be intended to have certain knowledge thereof, he shall not be compelled to show the certainty; and perhaps he was elected by voices or holding up of hands, and not by the number of persons in certain, in which case it is easy to determine who hath the majority of voices or hands, by hearing or seeing, and yet very difficult to know the certain number or names of them.' Saunders, J., was also of the opinion that a parliamentary election might legally be taken by the view, and added, 'and so shall it be in the election of a coroner, who

is chosen by voices or hands.' The Chief-Justice Brooke says: 'The election might be made by voices or by hands, or such other way, wherein it is easy to tell who has the majority, and yet very difficult to know the certain number of them; and in such manner there are divers elections in London. And I myself in London was elected by holding up of hands, but I could not tell how many there were that held up their hands.' He also refers to a case in the time of Henry VII., of an action by Richard Corbet against Sir Gilbert Talbot, sheriff of Shropshire, in which the legality of that method of election was virtually admitted, and adds significantly, 'which case I take to be worthy of particular observation. For the persons concerned in it were such sort of men (for I was born in the same county, and have heard of their tempers), that if there had been any defect in the pleadings on the one side or the other, they would not have passed it over to save any expense, as every one that knows the parties could affirm; and at that time there were very good lawyers.'*

It is clear from this report that up to the time of Philip and Mary elections were taken by the view or voices, and that, in the opinion of the judges, a poll was not essential in the case of a contest. But in the reign of James I. a different doctrine began to prevail, as the following extract from the 'Commons Journal,' for March 5, 1623 (21 Jac. I.) will show. Mr. Glanville reports from the Committee of Privileges a petition from Cambridgeshire concerning the validity of the election. 'Upon the first view, the poll demanded, but not proceeded in; and second view, but not performed. Demanded by both sides. Upon this, the third view, being in a mix't company. A mere void election, the conclusion of the committee generally.'†

It appears that at this election the view had been taken thrice, owing to an uncertainty as to which party had the majority. The House of Commons ordered a new election.

An account of the mode in which an election was conducted in Yorkshire a few years afterwards shows that the means then adopted for polling the electors were exceedingly rude and imperfect. Sir George More reports (July 4, 1625, 1 Car. I.) from the Committee of Privileges the following statement of its proceedings upon an examination of the sheriff of Yorkshire: 'That the sheriff was charged—1. That upon his view, without poll, he gave his judgment for Sir Tho. Wentworth and Sir Tho. Fairfax, to be knights; when Sir Jo. Savyle most

* Plowden's 'Commentaries,' p. 129.

† 1 'Commons Journal,' p. 729.

voices; 2ly, That when the poll required, he said it was only of courtesy to grant it; 3ly, That he began the poll, but having polled about thirty-five, brake it off . . . That upon Tuesday last he by his counsel alleged that the day of the election after eight of the clock he made proclamation and read the writ at the usual place. That the writ being read, he caused the gates to be shut; he took a view of the freeholders, and returning, said he thought Sir Tho. Wentworth and Sir Tho. Fairfax were double the voices of Sir Jo. Savyle. That he chose to take the poll at the postern gate, and having polled about thirty-five, heard the fore gate was broken open, and many freeholders gone out upon Sir John Savyle's persuasion that the poll would last many days. That thereupon he brake off the poll.' *

This report occasioned a great debate. In the course of it Sir Thomas Wentworth stated 'that the sheriff shut up the fore gate, went to the postern gate, and being without, the poll by the unlawful act of Sir Jo. Savyle himself interrupted.'

Sir Edward Coke 'liketh not the sheriff's answer that he needed not grant the poll: For bound to grant it.'

Mr. Glanvyle: 'If the poll were demanded before eleven o'clock, but not granted before, then the poll not granted at all, because the time for the election past. And it like the case of Cambridgeshire: wherein the House resolved that the not polling when demanded is misdemeanour in the sheriff.'

Sir Francis Seymour: 'That the poll demanded and granted before eleven. The shutting of the gate fit to exclude other freeholders who might come in and give their voices now when the time of election was past.'

The debate was resumed July 5. Sir Thomas Wentworth contended 'That the sheriff had no power when new men were let in to give them an oath whether they were present at the election or not for a *præmunire* if he had.'

To this Mr. Glanvyle replied: 'Adjudged in the case of Arondell that so many as came in during the polling had right of voices. So in the case of Gloucester.' The House resolved that the election for Yorkshire was void, and ordered a new writ.†

The sheriff in this case seems to have been under the impression that all electors who were present at the view, and those only, ought to be polled. He accordingly appears to have closed one of the entrances to the place of election, and to have stood at the other for the purpose of counting the voters as they passed out. The breaking open the gate which he had closed

* 1 'Commons Journal,' p. 801. † *Ibid.* p. 804.

was regarded by him as an interruption which justified a discontinuance of the polling.

In a report made by the Committee of Privileges to the House of Commons concerning an election for Southwark (March 2, 1623, 21 Jac. 1)* it is said 'the electors, according to their antient usage, declaring for whom they were by holding up of hands, at the first trial it seemed that Mr. Mingaie had the more hands with him; but upon a second and further trial, it seemed very clear that Mr. Bromfield had the more hands for him. But there were divers watermen and others present who ought to have no voice in the election; and albeit a motion was made in due time to try by numbering the polls of the electors who had the more voices, yet that course was not taken, but the assembly of electors dissolved without numbering the polls.' It was resolved that the election was imperfect, and a new writ was ordered.†

From these cases it is obvious that, so late as the reign of James I., the right to a poll when demanded was not completely established. Probably the resolutions of the House of Commons just cited tended materially to settle the practice. But even in the reign of William III. it was considered necessary to enact that 'in case the said election be not determined upon the view, with the consent of the freeholders there present, but that a poll shall be required for the determination thereof, then the said sheriff, or in his absence his under-sheriff, with such others as shall be deputed by him, shall forthwith then proceed to take the said poll.'‡

But up to the time of Henry VI., when the law respecting the forty-shilling freeholders was passed, there is no trace whatever of any instance of polling; certainly there was no scrutiny of votes. In reference to this Act of Parliament, and the petition of the Commons on which it was founded, the learned Prynne says, in his 'Brevia Parliamentaria Rediviva:' 'Before this petition and Act, every inhabitant and commoner in each county had a voyce in the election of knights, whether he were a freeholder or not, or had a freehold only of one peny, sixpence, or twelvepence by the year.'§

Thus, the opinion of that most learned antiquary, William Prynne—to whom we are indebted for the rescue of our most valuable parliamentary records from oblivion—exactly confirms the conclusion of the preceding chapters: that, up to the time

* 1 'Commons Journal,' p. 724. † Glanville's 'Cases in Parliament,' p. 7.
‡ 7 & 8 William III. c. 25.
§ 'Brevia Parliamentaria Rediviva,' London, 1662, p. 187, in margin.

of Henry VI., elections both of knights of the shire and burgesses took place in open court, free to all comers, and that 'EVERY INHABITANT AND COMMONER *in each county had a voyce in the election of knights.*'

In order to complete our investigation of the procedure at elections, it is necessary to explain the manner in which the *return* was made. It has already been shown that, in the time of Edward I. and several subsequent reigns, the sheriff made his return by simply appending to the writ the names of the persons chosen, with their mainpernors or sureties for their due appearance at the parliament.

In the reign of Henry IV. the form of returns was by statute required to be by *indentures*. But, long before that time, the returns were occasionally made by indentures, in which the names of the knights elected, and some of the electors (sometimes only a few, and sometimes a considerable number) were inserted. Prynne refers to such a return for Bedford as early as 12 Edward I.* The obvious purpose of this arrangement was to prevent the sheriff from making a false return; a number of electors subscribed the indenture, as witnesses that the sheriff had correctly stated the names of the persons chosen.

By the statute 7 Hen. IV. c. 15, respecting 'the manner of the election of knights of shires for a parliament,' it was provided that 'after they be chosen, the names of the persons so chosen (be they present or absent) shall be written in an indenture under the seals of all them that did choose them, and tacked to the same writ of the parliament, which indenture so sealed and tacked shall be holden for the sheriff's return of the said writ, touching the knights of the shire.'

Another Act, made four years afterwards (2 Hen. IV., c. 1), imposes a penalty of £100 on any sheriff making 'any return contrary to the tenor of the said statute' just cited.

The same contrivance of return by indenture extended to elections of citizens and burgesses. The statute 23 Hen. VI., c. 14, provides that the sheriff, after receiving the parliamentary writ, shall issue his precept to the mayors and bailiffs of cities and boroughs, commanding them 'to choose by citizens of the same city, citizens, and in the same manner and form, if it be a borough, by the burgesses of the same, to come to the parliament. And that the same mayor and bailiff, or bailiff when there is no mayor, shall return lawfully the precepts to the same sheriffs, by indentures between the same sheriffs and them,

* Prynne's 'Brevia Parliamentaria,' p. 190.

to be made of the said elections, and of the names of the said citizens and burgesses by them so chosen' (per endenturez entre mesme le viscount et eux affaire de lez ditz elections et dez nouns dez ditz citezeins et burgeisez issint per eux eslutz).

It will here be observed that, so far as concerned the election of citizens and burgesses, the return was to be made by indenture between the *sheriff* and the persons making the election.

Accordingly, we have several records of returns of citizens and burgesses made in the county court, by indentures between the sheriff and others. The utterly erroneous inference has frequently been drawn that, because the *returns* of burgesses were made in the county court, their *election* also took place there. A reference to the statute just cited effectually disposes of this hypothesis.

It has already been stated that the practice of returning citizens and burgesses by indenture prevailed a considerable time before this statute of Hen. VI. on the subject. In 8 Henry IV. the knights for the county and the burgesses for the town of Cambridge are returned by one and the same indenture, which witnesses that twelve persons named have chosen John Howard and John Rocheford for the county, and Simon Bentibowe and Thomas Beverles for the borough.* A like joint return is made for the county and borough of Huntingdon. Prynne says of these documents, 'the knights for the shire and burgesses for each county were elected together at the respective county courts.' But the documents merely say that the *indentures* were made in the respective county courts, not that the elections of both knights and burgesses took place there. The *return* of burgesses was made by indenture in the county court, in order that the sheriff might record the transaction in the most authentic manner.

In some returns, indeed, we find statements that the representatives of boroughs have been elected in the county court; but it is evident from the context that such election† was merely a formal declaration of a previous choice by the citizens or burgesses. For example, an indenture made in the county court of York, in 2 Hen. V., between the sheriff of Yorkshire of the one part, and the mayor of the city and thirteen other

* Prynne, 'Brevia Parliamentaria,' p. 252.

† The word 'election' was frequently used to denote, not the choice of the electors, but the ministerial act of the returning officer. Thus the statute 23 Henry VI., c. 14, recites that '*divers sheriffs* of the counties of the realm of England, for their singular avail and lucre, *have not made due elections* of the knights.'

citizens of the other part, witnesses that 'the said mayor and fellow-citizens in the said county court then being and having full power of the whole community of the said city, by unanimous assent and will freely and indifferently have elected two proper and discreet citizens,' &c.* It is quite clear, from the reference to the power received from the whole community of the city, that the mayor and thirteen other citizens attended at the county court merely to declare and record the choice of representatives which had been made by their fellow-townsmen.

Writers who are anxious to uphold the theory that the suffrage was antiently very much restricted have argued from the returns of this period that very few persons participated in the elections. But a very little attention to the language of the indentures themselves is sufficient to annihilate this hypothesis. In no single instance is it said that the persons subscribing the indentures were the only electors; on the contrary, there are much more frequently expressions which negative the supposition. It is often stated that the election was made by the whole community, or all the burgesses. For example, in the return for Wallingford in 5 Hen. V., the indenture is signed by only eleven electors; but the idea that they were the only persons who concurred in the election is expressly negatived by the statement that it was made by 'the consent and assent of all the burgesses.'†

The circumstance that the return for boroughs was made in the county court is explained by the fact that the sheriff was party to the indenture. This form was, as we have seen, required by the act of 23 Henry VI., and was in use before that time. There is no warrant for concluding that the choice of burgesses in distant boroughs was made in the presence of the sheriff. Probably the municipal returning officer either procured the signatures of some of the electors before he went up to the shire court, or they accompanied him thither.

* 'Predicti Major & Concives in Com. predicto tunc existentes, & plenam potestatem de tota communitate civitatis prædict. habentes unanimi assensu & voluntate libere & indifferenter eligerunt duo cives idoneos & discretos,' &c.—Prynne's *Brevia Parliamentaria*, p. 268.

† Prynne, 'Brevia Parliamentaria,' p. 288. In some cases the returns expressly state that others beside the parties to the indenture were present at the election. For instance, an indenture in 2 Hen. V., between the sheriff of Lincolnshire of the one part, the mayor and nineteen citizens of Lincoln of the other part, Witnesses that the latter have chosen two representatives of the city by the 'unanimous assent of them and other trustworthy persons there being' (ex eorum unanimi assensu et aliorum fide dignorum tunc ibidem existentium).—*Ibid.* p. 278.

If we suppose that the few electors whose names appear in the returns were all who participated in the election, we must adopt this preposterous conclusion, that they and the mayors and the sheriffs put upon record in a most authentic manner the fact that they had committed a breach of the law which was punishable by severe penalties. The statute 23 Henry VI. c. 14, above cited, provides that 'at every time that any mayor and bailiffs, or bailiffs or bailiff where no mayor is, shall return other than those chosen by the citizens and burgesses of the cities and boroughs where such elections be or shall be made, shall incur and forfeit to the king forty pounds,' and a further sum of forty pounds recoverable in an action of debt by the parties aggrieved. Now, there were many returns after this statute in which only a few burgesses are named as electors. For instance, in 29 Henry VI., fourteen burgesses are so mentioned as electors for Worcester.* Are we to understand that the fourteen persons usurped the authority which belonged to their fellow-townsmen? If so, we must suppose also that the mayor of Worcester committed the inconceivable folly of recording in a document, which was to be returned into Chancery, the fact that he had been party to an illegal transaction by which he exposed himself to a penalty of £80.

Similar observations are applicable to various antient returns for *counties*, which have been supposed to show that knights of shires were chosen by a very few electors, or to have been nominated by the influence of particular prelates and nobles. The strongest instances of this kind are certain returns for the county of York, in 13 Henry IV. and subsequently. The first of these indentures is a return to a parliamentary writ 12 Henry IV. The parties are described by Prynne to be 'the attorneys of the Archbishop of York, and sundry earles, lords, nobles, and some ladies who were annual suitors to the county court of Yorkshire, being the sole electors of the knights of the shire.' The latter part of this statement appears to be erroneous. On reference to the record it will be found that it does not state that the persons named were the sole electors. On the contrary, there are expressions which imply that the election was made in the regular way by the general constituency of the county. The following is a translation:—

'This indenture made in full county court of York, held there on Monday the feast of S. Wilfrid Bishop, in the thirteenth year of the reign of Henry the Fourth after the Conquest,

* Prynne, 'Brevia Parliamentaria,' p. 290.

Between Edmund Sanford, sheriff of York, of the one part, and William Halgate, attorney of Ralph Earl of Westmoreland; William de Rillyngton, attorney of Lucia Countess of Kent; William Hesham, attorney of Peter Lord de Mauley; William de Barton, attorney of William Lord de Roos; Robert Queldale, attorney of Ralph Baron de Graystock; William de Foston, attorney of Alexander de Metham, Chivaler; and Henry de Preston, attorney of Henry de Percy Chivaler, common suitors annually to the county of York every six weeks, of the other part, WITNESSETH that proclamation having been made by the said sheriff in the county court, by virtue of a certain writ directed to the same sheriff for holding a parliament of our lord the king at Westminster, on the morrow of All Souls next after the date of these presents: the aforesaid attorneys by unanimous assent and will, in the said county court then being, and severally having full power from the aforesaid suitors, freely and indifferently have chosen two fit and discreet knights,' &c.*

It will be observed in this document, in the first place, that the indenture is said to have been made in 'full county court.' The transaction was, therefore, under the observation and cognizance of the general body of suitors. Secondly, that

* 'Hæc indentura facta in pleno comitatu Eborum tento ibidem die lunæ in festo sancti Wilfridi Episcopi anno regni regis Henrici quarti post conquestum tertiodecimo inter Edmundum Sandford vicecomitem Eborum ex unâ parte et Willelmum Halgate attornatum Radulphi Comitis Westmerlandiæ Willelmum de Rillyngton' attornatum Luciæ Comitissæ Kanciæ Willelmum Hesham attornatum Petri domini de Malo Lacu Willelmum de Barton' attornatum Willelmi domini de Roos Robertum Queldale attornatum Radulphi Baronis de Graystok Willelmum de Foston' attornatum Alexandri de Metham Chivaler et Henricum de Preston' attornatum Henrici de Percy Chivaler sectatorum communium annuatim ad Comitatum Eborum de sex septimanis in sex septimanas ex parte alterâ testatur quod proclamatione factâ per dictum vicecomitem in Comitatu prædicto virtute cujusdam brevis pro parliamento domini Regis apud Westmonasterium tenendo in Crastino Animarum proximo futuro post datam præsentium eidem vicecomiti inde directi prædicti attornati unanimi assensu et voluntate in prædicto Comitatu tunc existentes et plenariam potestatem de secta[to]ribus prædictis separatim habentes libere et indifferenter elegerunt duos milites idoneos et discretos de Comitatu Eborum videlicet Johannem de Eton' Chivaler et Robertum de Plumpton' Chivaler ad essendum ad parliamentum prædictum die et loco prædictis pro Communitate Comitatus prædicti ad faciendum quod dictum breve in se requirit secundum formam ejusdem brevis In cujus rei testimonium partes prædictæ sigilla sua partibus hujus indenturæ alternatim apposuerunt Data die loco et anno supradictis.'

The foregoing has been printed from an extended copy of the original indenture in the Public Record Office. In the copy given by Prynne some slight verbal inaccuracies occur.

'proclamation' was made in the county court in pursuance of the parliamentary writ. That proclamation certainly was addressed not to the attorneys of half a dozen nobles, but to the whole body of persons entitled to attend the court. Thirdly, the attorneys are said to have made the election by 'unanimous assent and will.' It is most reasonable to construe that phrase as referring to the assent of the other persons present in the court. If the seven attorneys intended to speak merely of unanimity among themselves, they would probably have used the word *consent*, not *assent*. *Assensus* implies the adhesion of others rather than the concurrence of the parties themselves. And the word is continually so used in legal documents, and particularly in many parliamentary returns by indenture, in which the context expressly shows that the assent was that of the whole body of electors. It is very remarkable that the expressions *unanimi assensu et voluntate* and *libere et indifferenter*, which occur in this return, occur also in the nearly contemporaneous returns of burgesses in the same county court of York, which have been noticed in a previous page.* With respect to the return of burgesses, the context puts it beyond doubt that the whole body of citizens had been consulted. The similarity of the language fully justifies a similar inference with respect to the meaning of the phrase 'unanimous assent and will' in the county return. Besides, if no more than agreement among themselves were intended, the expression would be utterly superfluous; for the mere fact that they signed the indenture would have been sufficient evidence of such agreement.

The practice of appointing attorneys for suitors in the county court was, as we have shown in a former chapter, exceedingly common. An antient statute allowed every free man to send his substitute to do duty for him. Great lords and persons of wealth seem to have almost universally discharged in this way their obligation of attendance. In some cases we find that land was held on condition that the occupier should attend the county court on behalf of the landlord.† In the indenture just cited, the services of the common suitors were said to be required every six weeks, and, therefore, persons in the position of the Archbishop of York would certainly find substitutes to perform that onerous duty. The presence of the attorneys mentioned in the indenture is thus fully accounted for. If the document be understood to mean that the election was made by these seven attorneys, to the exclusion of the rest of the constituency, and that the transaction was under the cognisance of the Arch-

* *Ante*, p. 126. † *Ante*, chap. iv.

bishop, the Earl of Westmoreland, and the other noble persons mentioned, it follows that a prelate of metropolitan dignity, and six other persons of exalted rank, not only engaged in an unlawful act, but placed upon record the evidence of their illegal conduct. It follows also that the sheriff gratuitously exposed himself to the severe penalties to which he was liable by statute for making a return without the consent of the constituency.

When we turn to the parliamentary writ to which this return was originally sewn, and which is still preserved in the Record Office, we find that it directs that proclamation shall be made in the county court, and that the election shall be made 'freely and indifferently by those who shall attend upon that proclamation (libere et indifferenter per illos qui proclamationi hujusmodi interfuerint).' This form is substantially the same as that which came into use immediately after the enactment of 7 Hen. IV. noticed in a previous page.* It will be observed that in the return the election is said to have been made freely and indifferently (libere et indifferenter). These words are evidently borrowed from the parliamentary writ. But they would be an impudent parody of it if the sheriff and the other parties to the indenture meant to put upon record a statement that only the attorneys of a few great personages made the election.

The meaning of the indenture, it appears to me, is simply this: the sheriff, according to the usual practice, asked about half-a-dozen persons to sign the return as witnesses of its correctness, and for this purpose he applied to some of the most respectable people present at the court. The same course is adopted at every election at the present day. The returning officer gets a few of the electors to join in the indenture, and naturally applies to some of the more active and distinguished supporters of the successful candidates.

There is no warrant for concluding that either in Yorkshire or any other county, or in any borough, elections were commonly under the control of a few individuals at the period in question. Abuses on the part of the sheriffs occasionally occurred, but the indignant manner in which they were resented by the constituencies is strong evidence that they were not general. The statutes passed in the petitions of the House of Commons in the reigns of Henry IV. and Henry V. conclusively show that the Legislature exercised the utmost vigilance to secure freedom and purity of elections. Until the time of Henry VI. we have not the slightest ground for supposing that

* *Ante*, p. 106. The writ of 12 Hen. IV., to which this return is made, is given in the first Appendix to the 'Report on the Dignity of a Peer,' p. 811.

the popular rights of suffrage were frequently violated. On the contrary, an Act passed in the 23rd year of that reign (23 Henry VI., c. 14,) expressly states that elections of knights 'have been duly made until now of late that divers sheriffs of the counties of the realm of England, for their singular avail and lucre, have not made due elections.' We have ample evidence that under the earlier kings the people successfully maintained their constitutional right to choose their representatives 'freely and indifferently.'

CHAPTER VIII.

THE REPRESENTATION OF BOROUGHS.

Boroughs distinguished by their separate jurisdiction, 133.—*Saxon government of boroughs*, 134.—*Saxon municipal charters*, 136.—*Norman charters*. 139.—*Royal domain boroughs*, 144.—*Charters granted to towns not of Royal domain*, 146.—*Electoral franchise not originally confined to towns of Royal demesne*, 148.—*Boroughs excused on account of their poverty from sending members*, 156.—*Revival of discontinued franchise*, 158.—*The power of the Crown to enfranchise or disfranchise boroughs considered*, 159.

The origin of a complete system of representative government in England is, by common accord, referred to the period when the delegates of boroughs first sat in parliament. Before the celebrated assembly of 49 Henry III. A.D. 1265 was convoked by the influence of Simon de Montfort, Earl of Leicester, there had been several parliamentary councils in which knights of shires took part. The convention of Simon de Montfort was distinguished from its predecessors by the presence of citizens and burgesses. Their number is not known; nor is there any record extant which shows the cities and towns which made returns to the summonses then issued. It is certain that this assembly, called together in a revolutionary period, was not regarded after the re-establishment of the royal authority as a lawful precedent. There was no subsequent general summons of citizens and burgesses to a complete parliament until 23 Edward I., A.D. 1295, when Edward I., by his own free authority, convened all the estates of the realm. Happily a copy of the parliamentary returns of that date have been preserved, and we know the names of upwards of 120 boroughs which were then represented. Upon what principle were these towns selected? and who were the electors? In order to answer these questions we must consider what was the constitution of the boroughs themselves in the thirteenth century.

It is obvious that a borough must have been distinguished from other towns by something more precise than the mere number and density of its population. These are matters of degree: the law recognised a criterion more sharply defined. The characteristic legal distinction between boroughs and other populous places was the possession of a separate jurisdiction and local government. It has been already explained that

the general administration of justice was conducted in the courts of counties and hundreds. But to this general system there were various exceptions. Many great feudal proprietors had by grant or prescription their own jurisdictions, exempt from the authority of the sheriffs and other county officers. Another class of special jurisdictions were those of boroughs which had their own judicial and administrative institutions.

It is necessary to revert briefly to the Saxon period in order to understand how those institutions arose, and what was their nature at the time when they became a part of the machinery of representative government. The Conquest did not abrogate the Saxon political system: on the contrary, it was continued in full force in all essential respects at the time when cities and towns were first bidden to send their delegates to parliament.

The collection of Saxon laws which we now possess does not give a very copious or specific account of the constitution and privileges of boroughs. But these antient and venerable documents show with sufficient clearness some of the characteristics of the government in those places. For instance, the distinction between the folkmotes of boroughs and of counties is clearly pointed out. The 'Laws of Edgar' provide (cap. 2, § 5) that the borough gemot shall be holden thrice a year. These assemblies appear to have answered, among other things, the purpose of the sheriffs' turns in shires; for the next section requires that every man shall be under pledge (*borh*) both within boroughs and without. Certain persons, to the number of thirty-three in the larger towns and twelve at least in the smaller, are to be appointed as witnesses or compurgators, in the presence of whom the sales of chattels are to take place; and each of these witnesses on his election is to take an oath that 'he never, neither for money, nor for love, nor for fear, will deny any of those things of which he is witness, nor declare any other things above what he saw and heard.'*

Apparently these provisions refer to the same subject as the 'Laws of Athelstan' (I. § 12, 13), by which 'no man can buy any property out of "port" over 20 pence, but let him buy them within on the witness of the port-reeve or of another unlying man; or further on the witness of the reeves of the folkmote. And we ordain that every borough be repaired 14 days after Rogation Sunday: secondly, that every marketing be within port.'†

The 'Laws of Ethelred' (Articles of Peace, § 6) make some remarkable provisions respecting the preservation of the peace

* Supplement to Edgar's 'Laws.'

† 'Antient Laws and Institutes of England,' p. 122.

in boroughs. 'If a breach of the peace be committed within a borough, let the inhabitants of the borough go and get the murderers, living or dead, or their nearest kindred, head for head. If they will not, let the ealdorman go; and if he will not, let the king go; and if not, let the ealdordom lie in *unfrith*.' Probably the meaning of this law was, that the responsibility of exacting the penalty of a crime devolved primarily upon the townsmen; in their default, upon the alderman, who was the chief magistrate of the county; and if he did not fulfil the duty, the king's officers were to intervene. If all means of doing justice failed, the whole ealdordom, or district under the alderman, suffered the penalty of unfrith, or outlawry.

Many of the towns of England received from the Saxon kings charters granting to them special privileges and jurisdiction. A few Saxon municipal charters exist at the present day in their original language, and copies of several of them are given in the admirable collection to which frequent reference has been made, the 'Codex Diplomaticus.' Latin versions of other municipal charters, granted before the Conquest, are preserved upon the 'Patent and Confirmation Rolls.'* There are also abundant proofs from other documents that before the time of William I. a great many boroughs possessed their own separate systems of government. In the collection of laws or 'dooms' of the City of London, attributed to the time of Athelstan ('Judicia Civitatis Lundoniæ') † we have a most interesting account of the government of that city in the tenth century. It is remarkable that these constitutions or 'dooms' of London purport to have been adopted by the inhabitants themselves. They commence thus:— 'This is the ordinance which the bishops and reeves belonging to London have ordained and with pledges confirmed among our communities (frith gegildas), as well eorlish as ceorlish,' i. e. noble as ignoble. The ordinance is part of the royal laws; and thus we find, as Mr. Kemble observes, the burghers treating as power to power with the king, under their port-reeves and bishops.‡ By this ordinance the people were associated together in decennæ or tithings, as in the counties. Each of the tithings had its own chief, whose duty it was to 'direct the nine in each of those duties which we have all ordained' (§ 3). Besides these were hynden-men, 'who shall admonish the ten for our common benefit, and let those eleven hold the money of the hynden, and decide what they shall disburse when aught is to

* Merewether, 'History of Boroughs,' p. 56.

† 'Antient Laws and Institutes of England,' p. 97.

‡ Kemble, 'Saxons in England,' vol. ii. p. 312.

be paid, and what they shall receive if money arise to us at our common suit' (§ 3).* These hynden-men were to meet together once in the month, and were to 'have their refection together,' and the remains of their meal were to be distributed in charity (§ 8). Minute provisions were made respecting the common duty of pursuing criminals. The thief of goods beyond the value of twelve pence was to suffer death, if 'we learn according to folkright that he is guilty' (§ 1); a provision which shows a settled system of trying criminals. From these laws it is manifest that the chief officers of the city were its reeves, but that the people assumed a control in making their own laws. These 'dooms' are expressed to be made by their authority and the king's concurrently; and they profess their willingness to follow his advice if amendments should be needed. 'If we slacken in the peace and pledge which we have given and the king has commanded of us, then may we expect or well know that thieves will prevail yet more than they did before. But let us keep our pledge, and the peace as is pleasing to our lord. It greatly behoves us that we devise that which he wills, and if he order and instruct us more we shall be humbly ready' (§ 8).

Among undoubted Saxon municipal charters the following may be cited. There is a charter about the end of the ninth century,† by which half the local dues of the City of Worcester are granted to the cathedral at the request of the bishop. The grant is made by Æthelraed, the ealdorman, and Æthelflaed, who had built the town, and so become entitled to these dues. The charter states that 'Æthelraed the ealdorman and Æthelflaed commanded the burh at Worcester to be built and eke God's praise to be there upraised. And now they make known by this charter that of all the rights which appertain to their lordship, both in market and street within the borough (*byrig*) and without, they grant half to God and S. Peter, and the Lord of the Church.'

It is stated as a consideration of this grant, that the bishops have agreed that certain religious services and masses shall be performed at the cathedral for the grantors; and it is added, 'that they have thus granted with good will to God and S. Peter, under witness of Ælfred the king, and all the *witan* in Mercia; excepting that the wain-shilling and load-penny are to go to the king's hand as they always did from Saltwic; but as

* Hynden was an association of ten men. Mr. Thorpe ('Antient Laws,' &c., glossary, in voce) interprets this law thus: that the eleven who were to hold the money consisted of the senior of each hynden, together with the hyndenman who presided over the hynden of the hyndens, i.e. ten hyndens.

† 'Codex Diplomaticus,' No. 1075.

for everything else, as *landfeoh*, *fihtwite*, *stalu*, *wohceapung*, and all the customs from which any fine may arise, let the Lord of the Church have half of it for God's sake and S. Peter's, as it was arranged about the market and streets.' The wain-shilling here mentioned is a toll upon the standing or loading of waggons. The landfeoh and other sources of revenue were charges for occupation of land, or fines for breaches of the law.

By a charter* of a later date, A.D. 968, King Eadgar confers on the bishopric of Winchester certain profits of the borough of Taunton. This charter is both in Latin and in Saxon. The translation of the Saxon version runs thus: 'Here is made known in this writing how King Eadgar renewed the liberty of Taunton for the Holy Trinity and S. Peter and S. Paul to the episcopal see of Winchester, as King Eadward had before freed it and granted that both twelfhynde men and twyhynde men [nobiles quam ignobiles, in the Latin version], should in that same vill of God be worthy of the same rights that his own men are in his own royal vills. And that all suits and rights be in the same manner given into the hand of God as they were brought to his own: and let the town's market, and the produce of the town's dues, go to the holy place as they did before in the days of my forefathers, and were levied for Bishop Ælfeah, and every one of those who enjoyed the land.' The Latin version shows the meaning of these provisions more distinctly. The bishop was to have jurisdiction of all secular causes in this place, and the profits of the market of Taunton were given to his cathedral. This document is valuable as an early instance of separate local jurisdictions in a borough, and for the reference to the privileges of tenants of the royal demesne. The men of Taunton were to have all the privileges that the king's tenants enjoyed in his own royal vills.

In 'Domesday' there are repeated references to the franchises of boroughs as they existed in the time of Edward the Confessor. Thus, among the customs of Shrewsbury in that reign, it is stated that if any one knowingly broke the *peace which the king had given under his hand*, he was outlawed: if any one broke the peace which the sheriff preserved, he was fined a hundred shillings.† Thus a clear distinction is drawn between the special jurisdiction for keeping the peace within the borough which the king had granted under his hand, i. e. by charter, and the

* 'Diplomatarium,' p. 233.

† Si quis pacem regis manu propria datam scienter infringebat vtlagatus fiebat. Qui vero pacem regis a nicecomite datam infringebat c. solidos emendabatur. 'Domesday,' fol. 252.

general jurisdiction of the sheriff. In Warwick the burgesses are said to have enjoyed sac and soc—that is, a jurisdiction of their own—from the time of Edward the Confessor. Wallingford, Ipswich, and Derby are also among the towns which 'Domesday' states to have been boroughs before the Conquest.

Later charters frequently give evidence of the existence of separate municipal jurisdictions before the Conquest. Thus a charter* of Henry I. recites that the men of the guild at Rochester had in the reign of the Confessor the rights of sac and soc, toll, them, and infangthief. A charter of Henry III. confirms to the borough of Wallingford all its franchises and laws which it had in the reign of the Confessor and succeeding reigns.†

It is necessary to explain some of the technical expressions which occur in these documents. The Saxon names of various franchises designated with great precision the power exercised in the privileged places. *Sac* or *Saka* was the right to hold pleas for the redress of grievances, and probably did not include criminal jurisdiction. *Soc* was suit or obligation to attend a particular court; and it is derived by Spelman from *socan*, to follow or attend.‡ *Infangthief* was a liberty to try and judge a thief taken within the limits of the place having this franchise. *Outfangthief* was the right to pursue a thief beyond the jurisdiction, and bring him back to the court or place where the fact was committed, and there to judge and try him. *Toll*, theoloneum, was a toll for merchandise bought and sold. In the 'Laws' of Edward the Confessor it is defined to be the right of buying and selling in one's own land. *Them*, or *team*, was the right of the people within the jurisdiction to be under their own separate system of frankpledge; the nature of which has been discussed in a former chapter. These franchises were granted not only to towns, but also very frequently to the lords of manors. In the 'Laws' of Edward the Confessor it is said, that he who has infangthief has jurisdiction over a thief, if taken upon his land; but where these customs do not exist, justice is to be done in the hundreds or wapentakes or shires. §

It was the policy of William the Conqueror to preserve and

* Merewether, 'History of Boroughs,' p. 307.

† 'Brady on Boroughs,' App. No. 4.

‡ 'Soc' denotes, says Mr. Kemble, the district comprehended under a particular jurisdiction, as 'socmen, sokmanni' denote the persons subject to it. He adds, that in the earlier examples we far more frequently find 'socn' than 'soc.' 'Socn' is the preliminary investigation necessary in holding pleas.—*Codex Diplomaticus*, vol. i., Introd. p. xlv.

§ Spelman, 'Glossarium,' in vocibus. 'Brady on Boroughs,' App. p. 11. 'Antient Laws and Institutes of England,' p. 195.

extend the privileges of boroughs. One of the sections of his 'Laws' (III. 6) provides 'that all cities and boroughs, and castles and hundreds and wapentakes, shall be *watched* every night, and shall be kept in turn against evildoers and enemies, as the sheriffs, aldermen, reeves, bailiffs, and our ministers shall the better provide by their common council for the benefit of the kingdom.' The antient rule respecting sales in the presence of witnesses is repeated (III. 10), and it is provided (III. 11), 'that there shall be no market or fair except in cities of our realm and in close boroughs surrounded by walls, castles, and secure places, where the customs of our realm and our common law and the dignities of our crown, which have been established by our good predecessors, may not be destroyed or defrauded; but all things may be done rightly, openly, and according to judgment and justice; and for this purpose castles and boroughs and cities exist and were founded and built; that is to say, for the safety of the people of the land, and the defence of the kingdom; and therefore they ought to be preserved in full liberty, integrity, and right.'

One of the most remarkable privileges accorded to boroughs by these 'Laws' is that which constitutes them places of refuge for fugitive serfs. 'If any bondman shall have remained without claim for a year and a day in our cities or our boroughs surrounded by a wall, or in our castles, from that day they *shall be made free men, and they shall be for ever free from the yoke of bondage*.' The means of emancipation thus legally afforded to bondmen illustrates in a striking manner their condition in the Saxon and Norman times. The law tolerated, but did not encourage slavery. The lord lost his right over his bondman if he neglected to assert it for more than a whole year; and the fugitive who remained free and unmolested for that period could not be reduced to his former state of servitude. The boroughs scattered all over the country afforded easily accessible places of refuge, and thus the remarkable privilege confirmed to them by William the Conqueror had both directly and indirectly a material effect in destroying the institution of serfdom.

The practice of conferring special privileges upon particular towns became frequent after the reign of William I. It does not appear, indeed, that his immediate successor made any such grants. But a charter given to the city of London by Henry I. is preserved in the collection of laws which bears the name of that king.* That instrument may be regarded as a

* 'Antient Laws and Institutes of England.' The same charter is recited by 'inspeximus' in later charters.—*Brady on Boroughs*, App. p. 35.

type of the most extensive municipal franchises then granted. It gives the county of Middlesex to the 'citizens of London and their heirs' at the farm or annual rent of 300*l.*; and empowers them to elect their own sheriff and justiciary for holding pleas of the crown, and directs that no citizen shall be called upon to plead out of the city upon any plea. If any of the citizens be impleaded concerning the pleas of the crown, the *man of London* shall discharge himself by oath to be adjudged in the city.

The holding of the folkmote or court of the people is referred to in the following passage:—'And further, that there shall not be any *miskenning* in the hustings, nor in the folkmote, nor in any other pleas within the city: that the hustings shall sit once in a week, that is to say on a Monday.' Miskenning is variance, or inconsistency in pleading. This abuse of legal procedure was regarded by our ancestors as a serious grievance; as the frequent provisions against it in old charters demonstrate. *Hustings* (from *hus*, house; and *thing*, a cause) were the buildings in which causes were tried; the word designated the chief municipal court of justice in London, York, and many other cities.*

There is no mention of a mayor of London in this grant of Henry I. Spelman says that this office of mayor did not exist before the tenth year of King John, A.D. 1208, but by other authorities it is supposed to have existed as early as the year 1187. But the mayor and sheriff differed but little from the earlier magistrates, the port-reeve or port-greeve, and the prepositus. The port-reeves were not merely keepers of the gates, but also the principal magistrates of cities. The appellations of mayors and bailiffs were introduced by the Normans. A charter of William the Conqueror records the name of one of the antient port-reeves of London: 'William the king friendly salutes William the bishop, and Godfrey the port-reeve, and all the burgesses within London, both French and English.'†

The grant of franchises was frequently a matter of bargain and sale. For instance, the citizens of London gave 3,000 marks for the confirmation of their antient liberties by King John. The 'Oblata Roll' gives the following curious record of

* Spelman, in vocibus. The same author gives a copy of a very curious document illustrative of the practice of this court—an instrument of sale made about the time of Henry I. It states that 'Wlfnothus of Walebroc in London has sold to the Abbot Reinaldus a certain house and land at Walebroc, before the whole hustings of London, for ten pounds, given to him in the presence of the whole hustings. Of this bargain and sale the witnesses on the part of the hustings are William de Einelford, Sheriff of London, and John his undersheriff, and many others.'

† Spelman, sub voce Portgrefius.

the transaction:—'The citizens of London give to our lord the king three thousand marks for having a confirmation by our Lord the King of their liberties in this Charter: and it shall be delivered to Galfrid the son of Peter on this condition, that if they will give 3,000 marks they shall have their charter, but if not, they shall not have their charter.'*

Fines for grants and confirmations of liberties and franchises were frequently paid in the reign of King John. Thus, the citizens of Lincoln offer to the lord the king 300 marks to have the city of Lincoln at farm as they had in the time of King Richard. The citizens of Gloucester offer to the king 200 marks to have the same liberties as those enjoyed by the citizens of Winchester. The Abbot of Whitby offers to the lord the king 100 marks that the burgesses of Whitby may not enjoy the liberties granted to them by the Abbot of Whitby, and confirmed by the king's charter, until it be ascertained whether the abbot and convent were able to grant such liberties to them. The men of Hartlepool offer to the lord the king 30 marks that they may have the same liberties and laws in their town of Hartlepool as are enjoyed by the burgesses of Newcastle-on-Tyne in their town; and may have the king's charter thereof, and that they may be free burgesses. Their charter is delivered to William de Stutevill until they find sufficient sureties for the debt: a moiety is to be paid at Easter, and the other moiety at Christmas. The men of Burg offer the lord the king 20 marks and a palfrey to have a market every Sunday, and a fair for two days, viz., on the vigil and day of S. John the Baptist.†

* 'Brady on Boroughs.' App. No. 18.

† 'Rotuli de Oblatis, tempore Regis Johannis, accurante Thoma Duffus Hardy.' Preface, p. xix.

The following are other examples of the grant of municipal privileges for valuable consideration. In 'Domesday' (fol. 118), after particulars of land held by burgesses of Norwich, it is said that 'all this land of the burgesses was in the demesne of Earl Radulph, and he granted it to the king *in common* to make a borough between him and the king, as the sheriff witnesses.' And the survey shows that a large part of Norwich was then held by the king and earl jointly. Again, in 11 Henry III., the burgesses of Bristol paid sums of money to the crown for a grant that a part of the town called Redcliffe should be separated from Bristol, and answer with the county of Somerset.—*Merewether*, p. 458. In 5 Edward III. the burgesses of the town of Aberconway paid the king a sum of 20 pounds for having a confirmation of a certain charter.—*Madox*, 'Firma Burgi,' p. 64. Again, the burgesses of Dunwich paid to King John three hundred marks to have their liberties granted to them in their charter in the first year of King John, besides ten falcons and five girfalcons. The burgesses gave a further sum of 200 marks and 5,000 eels for having *wrec* and *lagan* inserted in their charter.'—*Brady*, App. No. 3.

The grant by Henry I. to London, it has just been observed, may be regarded as a type of the most extensive municipal privileges then granted. The following reference to a charter granted by Richard I. to the city of Lincoln illustrates this remark. After conceding that the citizens of Lincoln shall not be impleaded out of the city in any pleas, excepting those relating to lands held elsewhere, and matters relating to the king's revenue and officers, it is provided, among other things, that the 'burwaremot,' or folkmote of the borough, shall be held once a week. The charter proceeds: 'These customs we have granted to them, and all other liberties and free customs which our citizens of London have had, or have, as they have had them most favourably and freely according to the liberties of London and the laws of the city of Lincoln. Wherefore we will and strictly command that they and their heirs have and hold all the aforesaid things hereditarily of us and our heirs, rendering annually 180 pounds from Lincoln, with its appurtenances, at our exchequer at two terms—namely, at Easter and Michaelmas, by the hand of the provost of Lincoln. And let the citizens of Lincoln elect as provost whom they will annually who may be a fit person for us and for them.'*

The concessions of municipal privileges proceeded ordinarily, but not exclusively, from the crown. The same authority was exercised by personages possessing *Jura Regalia* within the districts in which they had vice-regal power. Thus, Truro was for some time in the possession of Richard de Lucy, Justice of England in the time of Henry II. Subsequently, the borough became vested in Reginald Earl of Cornwall, who died in 21 Henry II. This earl, by his charter, granted to his free burgesses of Truro that they should have all their free customs sac, soc, tol, them, and infangthief, and exemption from pleading in the hundred and county courts, and from tolls in all fairs and markets throughout Cornwall. Again, Richard, created Earl of Cornwall 15 Henry III., constituted Dunheved or Launceston a free burgh, with the power, among other privileges, of electing their own bailiffs; and gave them a site for a guildhall in the same borough. Several other Cornish boroughs received charters from Earls of Cornwall in the reigns of Henry III., Edward I., Edward II., and Edward III. Reginald de Valle Torta, or Vautort, who was lord of the honor and castle of Trematon, in the reign of Henry III. confirmed to the free burgesses of Essa or Saltash, within that honor, numerous franchises and free customs, including the right of electing

* 'Brady on Boroughs,' Appendix No. 20.

their own bailiffs. Brady, from whose 'History' these particulars are taken, gives several other instances of municipal charters granted by the Earl of Devon, the Earl of Lancaster, and others.*

The privileges of boroughs at the period under consideration were defined by custom and special charters. There was not then any general statute analogous to the modern Acts of Parliament regulating municipal corporations. But it would be a serious error to infer that the franchises of towns depended merely on the royal prerogative. If that were the case—if the will of the crown were the sole foundation of these popular rights—then, as they were arbitrarily given, they might be arbitrarily resumed, at least with respect to those towns which had not purchased their franchise for valuable consideration. This important constitutional question was vehemently debated at a much later epoch. The resumption of the charters of London and other cities by Charles II. raised a most violent discussion respecting the right of the crown to destroy municipal franchises. The high prerogative doctrine which for a time was triumphant, 'left,' as Hume observes, 'no national privileges in security, but enabled the king, under like pretences, and by means of like instruments, to reclaim all the charters which he pleased.'

But this doctrine certainly did not prevail in the times of the Norman and Plantagenet kings. The stability of the franchises of boroughs was declared by the general law of the land. The Magna Charta of John expressly establishes the liberties and custom of the city of London, and all other cities, boroughs, towns, and the Cinque Ports.† Again, the Great Charter of 9 Henry III. provides that 'the city of London shall have all its antient liberties and its customs. Moreover, we will and grant that all other cities and boroughs and towns, and the Barons of the Cinque Ports and all ports, shall have all their liberties and free customs.' A statute of 3 Edward I. c. 31 provides that towns shall be liable to forfeiture of their franchises for exacting excessive tolls contrary to the common custom of the realm, or for unduly taking the tax called murage, granted to them for enclosing their towns. The enumeration of particular offences for which borough franchises might be forfeited shows that the crown did not then assume a merely arbitrary power of extinguishing municipal privileges.

* 'Brady on Boroughs,' p. 93, *et seq.* † *Ante*, chap. v.

Many of the cities and towns which sent members to the earliest parliaments were *royal domain boroughs*. It is important that this phrase should be correctly understood, for it incessantly occurs in discussions respecting the origin of the representation of burgesses. By far the fullest and most satisfactory investigation of the proprietary rights of the crown in boroughs is contained in the learned treatise of Madox entitled 'Firma Burgi,' which is principally devoted to this subject. In the following references to the principal conclusions at which Madox arrives, it has not been considered necessary to cite the authorities by which he supports them.

After the Norman Conquest the principle of feudal tenures which affected land generally extended to boroughs. Some of the cities and towns of England were vested in the crown, some in the clergy, and others in the baronage of great men of the laity. The king was the immediate lord of some of these places, and particular persons were the feudal superiors or landlords of others. Of those which belonged to the king, part were possessed by the right of original inheritance of the crown, and were called ANTIENT DEMESNE. Others accrued to the sovereign by later titles, as by escheat on failure of heirs of a baron, by forfeiture on attainder, or by exchange or purchase.* It has been mentioned in a former chapter that questions whether particular lands were of antient demesne, were settled by reference to antient records, but principally to the Domesday book. The same records were decisive of disputes respecting the similar character of boroughs. If land was set down in the Domesday book under the title Terra Regis, or was there stated to be held by the king *in dominio*, then it was determined to be antient demesne. If 'Domesday' recorded land under the name of a private lord or subject, the entry was held conclusive in the contrary sense. Madox, in his 'Firma Burgi,' cites several instances occurring in the reign of Edward II. of reference by the judges to 'Domesday' and other records for the purpose of determining causes in which this question arose.

A city or town thus vested in the king was commonly styled *Civitas Regis*, or *Burgus Regis*. On the other hand, when the crown had let out a city or town at a fee farm or perpetual rent, the king held by seigniory. Lords of baronies frequently held in demesne all the towns within their baronies in a similar manner; so also the great baronial abbots and priors often were the demesne lords of the towns within their seigneries.

* Madox, 'Firma Burgi,' chap. i.

The yearly issues and profits to which the king was entitled from his boroughs were sometimes raised by the sheriffs of the counties in which those places were situated. In other instances they were demised, or let to the townsmen themselves, either in perpetuity or at will.

Of this practice of letting the issues of towns to the inhabitants at a fixed rent, the evidences after the Conquest are abundant and minute. But there is sufficient proof that the practice existed before that time. In the 'Domesday' entry of Huntingdon it is expressly stated that the dues of the town were farmed; two-thirds of the *firma burgi* were paid to the king, and one-third to the earl. In the entry respecting Shrewsbury, after an enumeration of certain fines payable to the crown, it is added that these fines the king had, throughout England, *extra firmas* (besides farms). And this expression seems to warrant the conclusion that in the time of the Confessor the practice of farming town-dues was not uncommon.*

There is evidence to the like effect in a return † respecting Gloucester, which is supposed to be coeval with 'Domesday.' After enumerating burgesses in Gloucester holding under different landlords, the record adds: 'And over all these the king has sac and soc; and there are ten churches in the king's own soke. In the time of the Sheriff Roger they paid a *farm* (reddebant de firma) of thirty-eight pounds and four shillings; now the render is forty-six pounds.'

The practice of farming the royal revenues was not confined to boroughs. The revenues of hundreds were frequently let in the same way. Thus in the 'Hundred Rolls' one of the subjects of inquiry was 'respecting *farms* of hundreds, wapentakes, cities, boroughs, and other revenues whatsoever.' The following, from the returns for Norfolk, is a specimen of the answers: 'The Hundreds of Lodenynges and Knavynge are in the hands of our lord the king, and were wont to be let to farm in the time of King Henry, father of the present king, for fourteen pounds, and are now let for twenty pounds.'‡

* See Ellis's 'Introduction to Domesday,' vol. ii. p. 482.

† *Ibid.* vol. ii. p. 445.

‡ 'Hundred Rolls,' p. 458, where there are several similar entries. This practice of letting hundreds to farm was abolished by the statute 2 Edward III. cap. 12. It recites that all the counties in England were in old time assessed to a certain farm, and all the hundreds and wapentakes were in the sheriffs' hands rated to this farm; that afterwards 'the kings at divers times have granted part of the same hundreds and wapentakes for the old farms only;' and, after showing the inconveniences of this practice, provides that henceforth wapentakes and hundreds shall be joined again to the counties.

The revenues of a borough might be demised at feefarm in perpetuity, or for a limited period, or during the king's pleasure. In such cases the town was demised to the townsmen in the same way that manors were let to the tenants. When the town was let to feefarm, the tenure was called *burgage*.*

The transaction, in fact, was not unlike the modern practice of letting turnpike tolls to contractors, or the practice which prevailed in France in the last century of letting public taxes to *fermiers generaux*, whose exactions were among the principal causes of the Revolution of 1789. In England, during the Middle Ages, the crown had various revenues from towns of the royal domain—such as customs of goods, tolls of fairs, markets, stallage, and wharfage. When the town was farmed to the inhabitants, they took these profits, and agreed to pay a lump sum in lieu of them. In some cases they were outbidden by private speculators. Madox refers to the dealings of a certain William de Stutevill, sheriff of Cumberland, in the time of King John, who appears to have entered largely into this kind of business. The men of Carlisle offered a fine to King John to have their city at the antient ferme and 60 shillings increment; William de Stutevill made a higher offer, and the king committed the city to him. There was at the same time the like competition between this man and four other towns in Cumberland—Penred, Languadely, Salkil, and Scoteby, in all which he prevailed, and succeeded in getting the towns committed to him.† The ordinary issues were commonly more than sufficient to make up the farm; but if the issues fell short, the inhabitants, where the town was demised to them, were of course compelled to make up the deficiency, according to their bargain.

If the farm or rent of a town were not duly paid, the sum due might be recovered by proceedings against the local officers or individual inhabitants; or the crown might resume the right of collecting the dues by its own officers, and suspend the authority of the borough officers. Thus, a charter of 5 Edward III., granted to Appelby, recites that Edward II., formerly King of England, on the 26th day of April, in the fifth year of his reign, 'took the said town of Appelby, from which 20 marks annually were due to him of feefarm, into his own hands, as appears by certificate of the Treasury and Barons of the Exchequer, made upon our command in our Chancery; on which account the said town remains still in our hands: We, in consideration of the fine (or composition) which the burgesses have paid to us, have granted to them the aforesaid town, to hold to farm as they or their predecessors, burgesses of the said town, have had and

* Madox, 'Firma Burgi,' chap. i. † Madox, 'Firma Burgi,' p. 251.

held the said town to farm before the aforesaid seizure.'* In 18 Richard II., in consequence of the default of the men of the town of Bridgnorth to account for the king's dues, leviable in the franchise of the said town, a precept issues out of the Exchequer to the sheriff, commanding that, notwithstanding the franchise, he shall levy the said dues and pay them into the Exchequer from day to day and term to term; and that he shall not make return of summonses to the bailiffs of the town for levying any of the king's debts. A few months afterwards the men of the town, by their attorney, make satisfaction, and the franchise is restored. Many other similar instances are collected by Madox. It is remarkable that the process against towns took place, not by any extraordinary exercise of the royal prerogative, but by an ordinary proceeding of the Court of Exchequer. But, on the other hand, it does not appear that the seizure of franchise extended beyond a substitution of the authority of the sheriff for that of the municipal officers in levying the king's dues.

Madox says: 'The Kings of England made their towns free burghs *ad incrementum* or *meliorationem villæ*, not to defeat themselves of their ferme due from the towns. It appeareth, by many of the charters of the antient kings, that the great end for which franchises were wont to be granted by the king to his towns, was this—To amend and improve the town; that is to say, to enable the townsmen to live comfortably, and to pay with more ease and punctualness their yearly ferme and other duties to the king.'

It must not be inferred from this passage—and probably it is not the author's meaning—that the franchises were granted only to those towns which were royal domain. There are numerous proofs that municipal charters were granted to places in which the king had not any proprietary rights. Thus a charter of the second year of King John, in favour of Bridgewater, commences—'Know ye that we have given and granted, and by this present charter have confirmed, to our beloved William Briwer, that *Brugc Walteri* shall be a free borough;' and concludes: 'Wherefore we will and firmly enjoin that the aforesaid William, and his heirs after him, shall have and hold all the aforesaid things, well and in peace, freely and quietly, wholly, fully, and honourably, with all liberties and free customs as aforesaid.' This was a grant to the landlord of the town, William Briwer or de Bruere.†

* Madox, 'Firma Burgi,' chap. ix. sec. 1.

† 'Willielmus de Bruere tunc dominus de Brugewalt'i.' (2 'Hundred Rolls,' p. 122.)

Lynn (or Lenna), in Norfolk, is another town not of the royal domain which received a charter from King John: 'Know ye that, at the instance of John Bishop of Norwich, we have granted, and by this our present charter confirmed, that the town of Lenna shall be a free borough for ever, and have all liberties and free customs which free boroughs have; saving to the bishop and his successors, and William Earl of Arundell and his heirs, all the liberties and customs which they have antiently enjoyed in the said town.'* It appears by the 'Hundred Rolls' that the Bishops of Norwich and the Earl of Arundell had various territorial rights and emoluments in this part.

Salisbury is another instance of a town not of royal domain constituted a borough by charter. New Sarum, or Salisbury, was founded in the reign of Henry III. The old town of Sarum is mentioned in Domesday. A charter (11 Henry III.) states that the church had been removed, and the first stone laid in a lower situation, and grants that the place called New Salisbury shall be a free city. It was held by the bishop of his own domain.†

In discussing the antient parliamentary rights of boroughs, two distinct questions arise: (1) what boroughs sent members to parliament?—(2) who were the electors?

In answering the first question, it will be convenient to examine a theory frequently maintained, that only *royal domain boroughs* possessed the electoral franchise. According to this view, the privilege was confined to places in which the crown had proprietary rights, and was not based upon any general principle of popular representation. Dr. Brady, a writer of the seventeenth century, was a zealous propounder of this doctrine. In his 'Historical Treatise of Cities and Burghs or Boroughs,'‡ he says: 'We shall proceed to discover what cities and burghs sent their representatives, or citizens and burgesses, upon such summons. The answer to this is very short—that they were only the *Dominici civitates* and *Burgi Regis*, the king's demeasn cities and burghs, such as had charters from the king, and paid a feefarm rent in lieu of the customs and other advantages and royalties that belonged to the crown.' He subsequently explains that the boroughs thus enfranchised were not merely those included in the Terra Regis of Domesday, but others which subsequently became, or were deemed to be, royal domain.

* Brady, App. No. 9.
† Merewether, p. 461; Brady, p. 101.
‡ Edition of 1777, p. 73.

'And further, 'tis not to be doubted but there are many small towns, manors, and places now reputed burghs, which were not such at the Conqueror's Survey, nor perhaps were they the king's demeasns at the time. But those manors and towns might have come to the crown afterwards by escheat or forfeiture, before there were any summons issued for the choice of citizens and burgesses.'* Thus, even on his own showing, his theory is merely conjectural. He says that several parliamentary boroughs, which were not of royal demesne at the time of Domesday, '*might have*' (not actually had) 'come to the crown.'

The 'Report on the Dignity of a Peer' countenances the same doctrine. Arguing upon the language of a single writ of 24 Edward I., for the collection of a parliamentary grant, the writers of the 'Report' say: 'The grant of the *cives burgenses et probi homines* being confined to such as were *de dominicis civitatibus et burgis*, it seems to follow that the *cives burgenses et probi homines* of such cities and boroughs only as were of the king's demesnes were summoned to send representatives to that parliament—a point which has been much disputed, but which the language of the writ seems to go far to decide.'†

Unfortunately for this theory, we have now positive proof that the parliamentary summonses of 23 Edward I. were directed to cities and boroughs, of which some were not then royal demesne, and others never had been so from the time of the Conqueror. In a former page of this work (p. 75), reasons have been given for translating the words *de dominicis civitatibus et burgis*—not 'of the domain cities and boroughs,' but 'of the domains, the cities, and the boroughs.' If the latter translation be adopted—if the grant, like many others of the same period, was made by the tenants of the royal lands, and also by citizens and burgesses—there is an end of the argument just cited from the 'Report on the Dignity of a Peer.' But, besides and beyond this, it appears, by the actual returns to the parliament in question, that towns not of the king's domain sent representatives. The context of the passage just cited shows that the writers of the 'Report'‡ were not acquainted with these returns; but they are now printed in the admirable edition of 'Parliamentary Writs,' to which frequent reference has been made in the preceding pages.

As the question affects the very basis of the borough franchise,

* Edition of 1777, p. 89. † 1 'Report,' p. 217.

‡ It appears also, from a subsequent page of the 'Report' (vol. i. p. 374), that the writers were not acquainted with the returns to the writs of 23 Edward I. Dr. Brady also was ignorant of them.—See his *Treatise on Boroughs*, p. 110 (edition of 1777).

it deserves detailed examination. The following are instances of towns which, by the sheriffs' returns, are shown to have sent members to the parliament of 23 Edward I., but which were not then royal domains.

Many of the boroughs of Devonshire and Cornwall had been given by Henry III. to his son Richard Earl of Cornwall, King of the Alemain. Thus, in the 'Hundred Rolls' of Edward I., it is stated that 'King Henry, father of the present king, held the castle of Dounheved, Launceston, with its appurtenances, and the whole county of Cornwall, as well in fee as in domain; and the same King Henry gave the same castle, with the appurtenances and the domain, to Earl Richard, King of the Alemain, his brother.'* With regard to the borough of Liskeard, it is said 'King Henry, father of the present king, gave the county of Cornwall, together with the whole manor of Liskaret and the whole township of Liskaret, to the Lord Richard his brother.† In Devonshire 'the city of Exeter was always in the hands of the Kings of England, predecessors of our lord King Edward, pertaining to the crown, until our lord King Henry, father of the aforesaid Lord Edward, gave it to Richard Earl of Cornwall.'‡ Of the borough of Totnes it is said, 'King Henry gave the aforesaid borough to Roger de Novaund.'§ Plympton was not only not royal domain in the reign of Edward I., but it had been in private hands ever since the Conquest: 'Isabella de Fortibus, countess of the Isle (of Wight), holds the castle of Plympton with the whole honor appurtenant, with the borough of Plympton, of our lord the king *in capite*, by the service of an earl, and her ancestors have held it from the Conquest of King William the Bastard.'‖ Of Tavistock, in the same county, the jurors return, 'That it formerly belonged to the lord King Adelred, then King of England before the Conquest, as they understand; and the same Adelred gave the same place, with the outer hundred, to Earl Ordulph, his brother.'¶ The borough of Barnstaple is said to be held by Galfridus de Canvill in right of his wife, whose ancestors held it 'from the Kings of England from the time of the Conquest of William the Bastard.'**

Every one of these places sent burgesses to the parliament of 23 Edward I. The three last mentioned had not at any time from the Conquest been royal domain; the others had been alienated by the crown after that period.

Kidderminster, in Worcestershire, also returned burgesses to

* 1 'Hundred Rolls,' p. 56. † *Ibid.* p. 57. ‡ *Ibid.* p. 70.
§ *Ibid.* p. 82. ‖ *Ibid.* p. 77. ¶ *Ibid.* p. 81. ** *Ibid.* p. 63.

the parliament of 23 Edward I. The 'Hundred Rolls' state (vol. ii. p. 284), that the manor of Kyderminister was in the hands of King Henry, the father of King John, who gave it to Maunsell Biset and his heirs; that it afterwards descended, by course of inheritance, to three sisters: one had a son, who gave his part to the prior and canons of Bradeleye, and the other two sisters still retained their shares.

From the same Rolls it appears that several of the boroughs of Wiltshire which sent members to the parliament of 23 Edward I. were not royal domains. Thus, 'the Bishop of Salisbury holds the city of Salisbury, with its appurtenances, of our lord the king *in capite* appurtenant to his barony, and it is the chief manor of the whole barony.'* Salisbury was made a city by letters-patent (11 Henry III.), and given to the bishop and his successors as their own domain (tamquam proprium dominicum);† therefore it had never belonged to the crown from the time when it was constituted a borough. Wilton, in the same county, was alienated by Henry III.: 'The town of Wylton was domain of the lord king, and the present lord king (Henry III.) gave it to his brother, the Earl of Cornwall.'‡ The town of Bradford was antiently given to the Abbess of Shaftesbury and her predecessors by King Ethelred.§ Malmesbury was conveyed by King John to the Abbot and Convent of Malmesbury, at a feefarm of twenty pounds, which they paid annually at the king's exchequer; and subsequently, by the assignment of Henry III., to the Earl of Cornwall. ‖

Another of these parliamentary boroughs of Edward I. (Stamford, in Lincolnshire) was given by King John to William Earl of Warenn. It subsequently became revested in the crown, and Edward I. 'held it for six years and upwards, and the same lord King Edward gave it to the Lord Eblerus de Montibus.'¶ 'The castle of Walingford, with the borough, was given by Henry III. to Richard Earl of Cornwall.'** The following entry relates to Axebridge, in Somersetshire: 'The borough of Axebrugg was a borough of King John. And King John gave the borough to a certain Thomas de Waleys and his heirs for a certain service, but what we know not; and the said John sold the said borough, with the appurtenances, to Maurice de Gaunt; and the said Maurice sold the said borough to Joceline, the Bishop of Bath; and William Bishop of Bath now holds the said borough, and pays now to the king eight pounds a year at the exchequer.'††

* 2 'Hundred Rolls,' p. 266. † Brady, p. 101; Merewether, p. 461.
‡ 2 'Hundred Rolls,' p. 233. § *Ibid.* pp. 232, 236. ‖ *Ibid.* p. 272.
¶ 1 'Hundred Rolls,' p. 351. ** *Ibid.* p. 9. †† *Ibid.* p. 126.

Manors and boroughs granted by the crown to private persons as feudatories would be the demesnes of the *mesne* lords and not of the king, even where, as in some of the previous instances, rents and services were reserved to him.

Bridgewater, another parliamentary borough in the same county, was held *in capite* by Roger de Mortimer and Eudo la Zouche; it had previously been held by William de Bruere.* The entry with respect to Taunton states, that 'the borough of Taunton formerly belonged to the king, and that in times unknown; and the Bishops of Winchester hold the borough of our lord the king.' †

Several of the parliamentary boroughs in Surrey similarly appear to have been in the domain of private persons, and not of the crown. 'The late King Henry held the city of Chichester, with its appurtenances, which is of the crown: which he assigned to Richard Earl of Cornwall, his brother, and now Edmund, son and heir of the said Richard, holds it.'‡ Brembre (or Bramber) was in the barony of Walter de Breus, who had a court in that place. § With respect to Lewes, it is said: 'John de Warenn, Earl of Surrey, holds *in capite* of our lord the king the whole rape of Lewes, from the time of the Conquest of England.' ‖

These instances completely negative the theory that the towns selected to send members to the parliament of 23 Edward I. were all of royal domain. The boroughs thus shown to have been in the hands of subjects of the crown were represented in that assembly. It is probable that, on more careful and minute inquiry, the list of parliamentary boroughs not belonging to the royal domain might be increased. The evidence of the 'Hundred Rolls' is the more valuable with reference to this subject, because they were compiled within a few years of the date of the parliament in question. It would be very easy to show, from Domesday, that at the time when that record was made, many of these parliamentary boroughs did not exist, and that others of them which then existed were not included in the Terra Regis or crown-land.

Dr. Brady, in support of his theory of the origin of burgess representation, contends that grants in parliament were often expressed to be made by *towns of royal domain*. But this statement is disproved by the very documents which he cites in support of it. Thus, the record of the parliamentary grant of 34 Edward I. (on which he relies), after reciting the aid given by

* 2 'Hundred Rolls,' pp. 122, 126. † 2 'Hundred Rolls,' p. 137.
‡ *Ibid.* p. 201. § *Ibid* pp. 202, 208. ‖ *Ibid.* p. 208.

the lords and knights of the shire, proceeds thus:—'Also the citizens and burgesses of cities and boroughs, and others of the domains of the king (cœteri de dominicis) being assembled,' granted a thirtieth. It is added that, 'the prelates and other magnates of the realm, for themselves and the whole community of the same realm, have granted to our lord the king a thirtieth of all their temporal goods without cities, boroughs, and the domains of our lord the king; and the citizens and burgesses, and the tenants of the said domains a twentieth' (vicesimam bonorum suorum temporalium extra civitates burgos et dominica domini regis; et cives et burgenses et tenentes dominicorum predictorum vicesimam)*—that is, the citizens, burgesses, and tenants of the domain lands made a separate grant. There is not a word here about those domains being towns, as Dr. Brady suggests. The towns and crown-lands, probably on account of their greater wealth, usually made larger grants than the counties.

In another passage, Dr. Brady is obliged to resort to a mistranslation to support his theory. Part of a record relating to a grant in 8 Edward III. he translates thus: 'There were sent commissaries unto every county in England, to agree and compound with the inhabitants of every town that was to pay a fifteenth; and also with the communities of cities and boroughs, and men of towns of ancient demeasns which paid a tenth.' It is difficult to abstain from pronouncing this version wilfully dishonest. The words rendered by Dr. Brady, 'men of the towns of ancient demeasns,' really means 'men of the towns AND of the antient domains' (hominibus villarum et dominicorum antiquorum). In the original, the towns are clearly distinguished from the antient demesnes.

Not one of the records cited refers to any parliamentary grant made by royal domain towns in particular, and therefore the inference that they were exclusively represented falls to the ground. It is moreover contradicted, as we have seen, by direct evidence. This narrow doctrine being rejected, we have to inquire what broader principle determined the selection of towns originally summoned to send members to parliament.

The safest clue is obviously the writs of summons to parliament, and the sheriffs' returns to them. The election of citizens and burgesses as a regular practice dates, as we have seen, from 23 Edward I. The writs of that date command each sheriff to cause 'two knights of the said county, and of *every*

* 'Brady on Boroughs,' App. No. 13.

city of the same county two citizens, and of *every borough* two burgesses, of the more discreet and apt for business, without delay, to be elected, and to come to us at the aforesaid day and place' (quod de comitatu prædicto duos milites et de qualibet civitate ejusdem duos cives, et de quolibet burgo duos burgenses de discrecioribus et ad laborandum potencioribus sine dilatione eligi et eos ad nos ad prædictum diem et locum venire facias).

According to the terms of these writs, *every* city and *every* borough were to send members to parliament. In the returns to them the sheriffs state, firstly, the names of the knights and their manucaptors, or sureties for their due appearance in parliament; secondly, burgesses and citizens, with the places for which they are returned, and their manucaptors. Some of the returns add special remarks, which indicate the sense in which the writs were interpreted by the sheriffs. Thus the sheriff of Cornwall, after the names of five boroughs and their representatives, adds: 'There are not any more market towns (villæ mercatoriæ) in the county of Cornwall, nor is there any city in the said county'—showing that he understood that all *market towns* were to be represented. The returns for Middlesex give the names of two knights of the shire only, and adds—'There is not any city or borough in my bailiwick.' The return for Oxfordshire, after the names of the knights, states that 'there is no city or borough in the county of Oxford, except the town of Oxford; and the writ which came to me was returned to the bailiffs of the franchise of the said town, who have return of all writs; and they answer me, that by the assent of the community of the town of Oxford, there were elected, according to the form of the writ, the two burgesses undermentioned—Thomas de Sowy de Oxon, Andr. de Pyric of the same.' The sheriff of Berkshire says he has sent 'the writ of our lord the king to the bailiffs of the borough of Walingford and Reading, who have return of all writs, and they have answered, as further appears below.'*

* 1 'Parliamentary Writs,' p. 40.—These returns are taken from the Petyt transcripts in the Inner Temple Library. The following is part of a memorandum in the handwriting of the celebrated antiquary George Holmes, explaining the circumstances in which the Petyt transcripts were made:—'In my searches in the King's Remembrancer's Office in the Exchequer, near twenty years ago, I met in a great chest several broken bundles of writs and other records in the reigns of different kings huddled up together: and amongst them I found an imperfect bundle of writs, with their returns, to a parliament to be held at Westm' anno 23 Ed. I.—the very first president hitherto found out by any man that I have heard of. This discovery being made by me, I ordered my clerk to take a copy of those writs and returns which I have, and after acquainted Mr. Halsted (then deputy to S^r^ Algernoon May, Keeper of the

The cities and towns elected members of parliament by the authority of a mandate received, not directly from the crown, but (as these returns show) immediately from the sheriff. This practice, commenced in the reign of Edward I., continued to our own times. It was not until the year 1853 that an Act of Parliament* provided that the writs to the sheriffs should require them to make election for their own counties only, and that writs for elections in boroughs should be issued directly to their own returning officers.

According to Prynne, the whole number of cities, boroughs, and ports which, from the time of Edward I. to that of Edward IV., received summonses to return members to parliament was 170. Some of them made no return, others not more than once; several returned four or five times, and others, after long discontinuance, resumed the electoral franchise. New boroughs received writs in several of the intervening reigns, and after the time of Edward IV. several, though poor and inconsiderable, made returns, 'by the practice of sheriffs or ambitious gentlemen seeking to be made burgesses for them, and consent of the poor burgesses of them being courted, feasted by them for their voyces, without charters from the king, or title by antient custome or prescription.'† Prynne notices that the parliamentary writs addressed to the sheriffs, directed the election of citizens and burgesses for every city and borough, without designating particular cities and boroughs; and he adds—'Thereupon every sheriff used a kind of arbitrary power in execution of the general clause, according as his judgment directed, or his affections of favour, partiality, malice, or the solicitations of any private boroughs to him, or of competitors for citizens' or burgesses' places within his county swayed him.'‡

These, however, were clearly abuses of the law. The parliamentary writs certainly did not give the sheriffs any arbitrary power of election; they were simply required to make returns for every city and borough. If any of them refused to obey the mandate, sheriffs had no power of enforcing obedience. The law upon this subject is correctly laid down by a modern learned writer,§ as follows: 'It was the duty of the sheriff to

Records at the Tower, and after to Dr Brady) with my discovery, which I believe, upon very good reasons, Mr Halsted afterwards told the Doctor of.'—*Ibid.* p. 24.

* 16 & 17 Vict. c. 68.

† Prynne, 'Brevia Parliamentaria Rediviva,' p. 229. ‡ *Ibid.* p. 231.

§ Merewether and Stephens, 'History of Boroughs,' p. 1931.

ascertain, according to the fact, what places were boroughs and which not, and accordingly to grant his precept to them. With the power of arbitrary selection, the constitution never entrusted the sheriff; the duty cast upon him he was bound to perform under the same responsibility as his other official acts, and in the same manner as he would take notice of any liberty or exempt franchise which actually existed within his bailiwick. This appears by several of the returns, in which the sheriff stated that the writs were returned by the officers of particular places, who had the privilege of returning writs in them.'

That the sheriffs exercised a discretion in exempting boroughs incompetent from poverty, or want of population, is manifest. There are many returns of the reign of Edward III., and later dates, which assign such reasons for omitting returns from particular places. Thus, in 38 Edward III., the sheriff of Lancashire, after the names of the knights, adds: 'And there are not any cities or boroughs within the county from which any citizens or burgesses ought to come to the said parliament, or are wont, because of their inability or poverty' (propter eorum debilitatem seu paupertatem).* There are many similar returns from the same county in subsequent reigns. In 27 Henry VI., 'There is not any city within the said county, nor borough, which, at any parliament in times past, was wont to find (*invenire*) any citizens or burgesses, because of their inability and poverty.' †

Frequently the omission of returns from towns resulted from the default, not of the sheriff, but of the towns themselves. In several instances the return shows that the precept has been issued, but the boroughs have refused to comply with it. Thus, in 17 Edward III., it is stated, with respect to Chiping-Torington, in Devonshire, 'The bailiffs have given me no answer;' and the statement is repeated in 19 Edward III. and 20 Edward III. In 42 Edward III., there is a remarkable application from this place to the king: to the effect that they ought not to be burdened with sending men, neither did they send any before the 21st year of his reign, when the sheriff maliciously returned into the chancery that the town was a borough; and from that year, by pretext of that return, the town had been annually required to send men to parliament, and thereby had been put to great pains and expenses. The statements of this petition were incorrect, for though, for three parliaments before 21 Edward III., they did not elect

* 'Brady on Boroughs,' p. 121.

† Prynne, 'Brevia Parliamentaria Rediviva,' p. 237.

burgesses, they had certainly done so several times previously. Upon this petition the king, by his patent, stated that, being unwilling to burden the town of Toriton to find or send men to parliament, 'We have and hold you excused, and exonerate you therefrom by these presents for ever.' *

Again, in 6 Richard II., a temporary exemption was granted to the burgesses of Colchester, for five years, 'in aid of the expenses of enclosing the said town with a wall of stone and mortar for resistance of enemies.' †

In strictness, the office of the sheriffs, with respect to parliamentary elections, was ministerial, not judicial; and any discretion which they exercised in excusing boroughs was in excess of their legal powers. This appears manifestly by the statute 5 Richard II., stat. 2, c. 4 (A.D. 1382), which enacts that 'if any sheriff of the realm be from henceforth negligent in making his returns of writs of the parliament, or if he leave out of the said returns any cities or boroughs which be bound, *and of old time were wont to come to parliament*, he shall be punished in manner as was accustomed to be done in the said case in antient times.'

On the face of it, this is no new law: the sheriff is to be punished as in antient times (*dauncienetee*) if he omits the proper returns. In other words, it is distinctly recognised that the antient constitution does not give him an arbitrary power of disfranchisement. It is remarkable that no provision is made for an excess of power in the opposite direction. Representation was a burden, not a privilege; and the statute does not indicate that the sheriffs had, up to that time, unduly imposed that burden on any towns which were not boroughs. Another valuable lesson to be learned from this enactment is, that it makes usage the criterion for distinguishing parliamentary boroughs; the returns are to be sent for all cities and towns 'which of old time were wont to come to parliament.'

It would be almost hopeless now to attempt to discover the reasons for all the irregularities in the antient returns from boroughs. Beyond doubt, the principal if not the only reason was their poverty, and anxiety to escape from the payment of the wages of members of parliament. The extent of the irregularities must not be overestimated. It would be a serious

* Prynne, 'Brevia Parliamentaria Rediviva,' p. 239.—Prynne adds that, notwithstanding this perpetual exemption, Toriton sent burgesses to the very next and several subsequent parliaments, and he conjectures that the patent may have been revoked because grounded on false information (p. 240).

† Prynne, 'Brevia Parliamentaria Rediviva,' p. 241.

mistake to suppose that the borough representation was in a state of utter confusion and irregularity during the reigns of the Plantagenet kings. On the contrary, the great majority of towns represented in the parliaments of Edward I. continued to send members to all succeeding parliaments. After that reign there appear to have been but few, if any, creations of new parliamentary boroughs, until the corrupt times of Henry VI. Nor until the latter period—which witnessed, as we have seen in a former chapter,* an almost absolute suspension of constitutional rights—was there any considerable revival of decayed boroughs. From Edward I. to Henry VI. the number of represented cities and boroughs remained nearly constant.

In the reign of Henry VI. a considerable number of new parliamentary boroughs was created, and the representation of many decayed boroughs was revived. Saltash, Camelford, West Looe, Grampound, Bossiney, S. Michael, Wooton-Bassett, and Newport first sent members in this reign. Among the towns which then, after long intermission, resumed the electoral franchise, were Downton, Hindon, Heytesbury, Westbury, and Cricklade.

There is sufficient evidence in the Paston Letters of the reasons for reviving the representation of small boroughs in the reign of Henry VI. and the following reign. In a letter to Sir John Paston from his brother, in 1472 (12 Edward IV.), the writer says: 'James Arblaster hath written a letter to the bailiff of Maldon, in Essex, to have you a burgess there . . . If ye miss to be burgess of Maldon, and my Lord Chamberlain will, ye may be in another place; there be a dozen towns in England that choose no burgess which ought to do it; ye may be set in for one of those towns, and [*if*] ye be friended. Also in anywise forget not in all haste to get some goodly ring, price of 20*s*., or some pretty flower of the same price, and not under, to give to Jane Rodon; for she hath been the most special labourer in your matter, and hath promised her goodwill forth; and she doth all with her mistress. And, [*if*] my Lord Chamberlain will, he may cause my lord of Norfolk to come up sooner to the parliament than he should do, and then he may appoint with him for you ere the farm-corn be gathered. I proffered but £40, and if my Lord Chamberlain proffer my lady the remanent, I can think it shall be taken. My lady must have somewhat to buy her a coverchief, besides my lord.'†

It is obvious from this letter that the House of Commons had sunk to a very degraded condition, and that a traffic of

* Chapter VI. † 'Paston Letters,' vol. ii. p. 107.

seats in that assembly was carried on, almost openly, with great noblemen and officers of state. The reference to towns 'which choose no burgess which ought to do it,' shows that decayed parliamentary boroughs were revived to serve personal and party interests.

But, whatever abuses occurred in practice, there is no obscurity in the antient law respecting boroughs entitled and required to send members to parliament. The statute of Richard II. (already cited) directed that returns should be made for all cities and towns 'which of old time were wont to come to parliament.' Again, an act of 23 Henry VI. c. 14, required that every sheriff, after delivery to him of the writ of summons, 'shall make and deliver, without fraud, a sufficient precept under his seal to *every* mayor and bailiff, or to the bailiffs or bailiff where no mayor is, of the cities and boroughs within his county, reciting the said writ, commanding them by the same precept, if it be a city, to choose by the citizens of the same city two citizens, and in the same form, if it be a borough, burgesses to come to the parliament' [per citezeins de mesme la citee deux citezeins et en mesme la fourme si soit burgh, burgeisez de venir al parlement].

The limitations of the powers of the crown with respect to the creation of new seats in parliament appear very clearly by the course of legislation, in the reign of Henry VIII., affecting Wales. Until the latter part of that reign, the principality did not send any members to the English House of Commons. Upon the incorporation of Wales an act was passed (27 Henry VIII. c. 26), by which the shires of that country were authorised to elect knights, and 'every borough being a shire-town within the said country or dominion of Wales, except the shire-town of the foresaid county of Mereoneth, one burgess.' This legislation shows that in the reign of Henry VIII.—who certainly was not wont to underestimate his prerogative powers—it was deemed necessary to have recourse to parliament to create new seats in the House of Commons. A few years later a similar act was passed (34 and 35 Henry VIII. c. 13), 'for making knights and burgesses within the county and city of Chester.'

Prynne considers that 'all new boroughs erected, or old poor ones revived, since 23 Henry VI., by the sheriffs' precepts, by pretext of the general clauses in the king's writs, the solicitations of competitors for burgess-ships, or of the boroughs lately set up or restored, or by a bare order of the commons' house or king's charter, without any Act of Parliament, may justly be suppressed and unburrowed by *quo warranto*.'* Notwith-

* Prynne, 'Brevia Parliamentaria Rediviva,' p. 238.

standing the high authority of Prynne on questions of constitutional law, his opinion respecting the revival of antient boroughs may be confidently disputed. That the crown had not, after the statute of 23 Henry VI., a prerogative power of creating new parliamentary franchises, is clear; but the same statute perpetuated the existing franchises. The true doctrine on this subject was clearly laid down by the celebrated Election Committee of 1628 (4 Charles I.). This body included three of the most illustrious constitutional scholars whose names are known to English history — Sir Edward Coke, Sir Robert Cotton, and John Selden. Upon consideration of the cases of Milborne Port in Somersetshire, and Webley in Herefordshire, which had antiently sent burgesses, but afterwards had long discontinued to do so, the committee decided that 'by the writ every antient borough ought to send burgesses,' and that 'long discontinuance no loss of it — this no franchise which may be lost, but a service *pro bono publico*;' and thereupon the house ordered the issue of writs for these two antient boroughs.*

In the reign of Queen Elizabeth, the constitutional principle, which restrained the crown from creating new parliamentary boroughs, was acknowledged in theory, though it appears in some instances to have been violated in practice. Upon the meeting of parliament in 1562 (5 Elizabeth), it is reported in Sir Simonds D'Ewes's Journal, that 'Burgesses being returned of divers boroughs not lately returned in the chancery—viz., the burgess of Tregony, S^t^ Jermynes, and Maws in Cornwall, the borough of Minhed in Somersetshire, the borough of Tamworth in Stafford, Stokbridge, and the borough of Stankbridge in Southampton—Mr. Speaker declared that the Lord Steward agreed that they should resort into the house, and with convenient speed, to show *letters-patent* why they should be returned in this parliament.'†

Though Queen Elizabeth purported, by her charters, to incorporate some of these places, she did not profess to give them any right of returning members. Sir Simonds D'Ewes adds that in former times boroughs frequently, on account of their poverty, had neglected to return members to parliament when representatives were paid by their constituents; but when the payment of wages was discontinued, 'many of those borough

* 'Journal of the House of Commons,' p. 891.

† Sir Simonds D'Ewes, 'Journals of all the Parliaments during the Reign of Queen Elizabeth.' (London, 1682, fol. p. 80.)

towns which had discontinued their former privilege by not sending, did again recontinue it (as these towns here), both during her Majestie's reign, and afterwards in the reign of King James, her successor.'

It is important to observe that, in the numerous charters granted by Elizabeth to towns, they are declared to have been 'immemorially incorporated.'* Thus, it is evident that the crown did not, ostensibly at least, claim a prerogative to create new seats in parliament.

Upon the meeting of parliament in 1570 (13 Elizabeth), certain members were appointed to confer with the Attorney-General and Solicitor-General, about the returns for nine boroughs—East Looe, Fowey, Cirencester, Retford, Queenborough, Woodstock, Christchurch, Aldborough, and Eye—which, it was alleged, had not returned burgesses to the last parliament. Some at least of these places appear to have previously existed as boroughs. In 14 Edward II., Otes de Bodrijan, then lord of Looe, granted a charter, in which he mentioned the reeve and the mayor. In 14 Edward III., Fowey, with Looe, sent a representative to a council at Westminster.† Cirencester is stated by Glanville to have antiently sent burgesses to parliament; but this statement is disputed by Serjeant Merewether, who says that Cirencester does not appear to have been incorporated before the reign of Queen Elizabeth.‡ I find, however, that in the 'Hundred Rolls' (*temp.* Edward I.) the marketplace and the bailiffs of Cirencester are mentioned.§ This town was certainly directed to send burgesses to the parliament or council summoned to meet at Westminster, the Friday before Michaelmas, 2 Edward III. ‖ So that there is some warrant for the statement in Glanville. Retford is said to have sent representatives to a parliament or council in 9 Edward II. Queenborough was made a borough in 42 Edward III.; Woodstock in the reign of Edward I., and it sent representatives to parliament in 30 Edward I. Christchurch is mentioned as a borough in Domesday; so is Aldborough. The burgesses of Eye are also mentioned in that record.¶

Thus, it seems that there was at least some foundation for the incorporation of these places, on the ground of antient right. The material point is, that Queen Elizabeth granted charters to these nine towns on that ground, and therefore tacitly

* Merewether, 'History of Boroughs,' p. 1221.
† *Ibid.* pp. 1254 and 1276. ‡ *Ibid.* p. 1281.
§ Also in Madox, 'History of the Exchequer,' p. 486.
‖ 'Report on the Dignity of a Peer,' App. i. p. 486.
¶ Merewether, 'History of Boroughs,' p. 1253 *et seq.*

admitted that she had not a prerogative to create new parliamentary seats at her own absolute discretion.

Upon the Report of the Committee appointed to confer with the Attorney-General and Solicitor-General respecting these boroughs, it is 'ordered, by Mr Attorneys Assent, that the burgesses shall remain according to the returns, for that the validity of the charters of their Towns is elsewhere to be examined, if cause be.'* The House of Commons did not at that time, as it does now, claim exclusive authority to determine questions of controverted returns to parliament. In the cases before us, it left the legality of the charters to the jurisdiction of the courts of law. Those courts, by writ of *quo warranto*, had power to restrain any person or corporation from usurping any franchise without good title, or to declare it forfeited by nonuser or misuser.

The Stuart kings went far beyond those of the preceding dynasty in assuming a power of enfranchising and disfranchising boroughs. 'During the violent proceedings that took place in the latter end of the reign of King Charles II.,' says Blackstone,† 'it was, among other things, thought expedient to new-model most of the corporate towns of the kingdom; for which purpose many of those bodies were persuaded to surrender their charters, and informations in the nature of *quo warranto* were brought against others upon a supposed, or frequently a real, forfeiture of their franchises by neglect or abuse of them. And the consequence was, that the liberties of most of them were seized into the hands of the king, who granted them fresh charters, with such alterations as were thought expedient; and during their state of anarchy, the crown named all their magistrates. This exertion of power, though perhaps, in *summo jure*, it was strictly legal, gave a great and just alarm; the new-modelling of the corporations being a very large stride towards establishing arbitrary power.' In the succeeding reign of James II., the usurpations of the crown became direct and open, and, as Hume observes, 'by the practice of annulling the charters, the king was become master of all the corporations, and could, at pleasure, change everywhere the whole magistracy.' When it was too late, James sought to avert the popular indignation by retracing his steps. One of the last acts of his reign was to publish a proclamation restoring the corporations, and directing that all the cities, towns, and boroughs in England and Wales should be put in the

* Sir Simonds D'Ewes, 'Journals,' p. 159.

† 3 'Commentaries,' p. 263.

same condition as they were in before any deed of surrender or judgment against them. By the same instrument the king annulled charters which had been granted to new boroughs, incorporated since 1679.*

The first public act of William III. was a declaration, reciting the evils of the former government, and particularly condemning the seizure of franchises of towns which had a right to be represented in parliament. The declaration directs that the late charters, by which the elections of burgesses are limited, contrary to antient custom, shall be considered null and void, and that all the boroughs shall return to their antient municipal rights.

The extent of the power of the crown to create new parliamentary boroughs has been much controverted. In the case of Newark, the existence of that prerogative was distinctly affirmed by the House of Commons in the reign of Charles II.; but the precedent has never since been followed, and all claim to such a power on the part of the crown has from that time been abandoned.† Serjeant Merewether, who is by no means a favourer of excesses of royal authority, thinks 'that the king, as the head of the executive government, had the undoubted prerogative of declaring within what districts the law should be administered, and therefore had the power of creating boroughs, upon which creation would follow all the legal consequences.' The sending of burgesses to parliament, he previously observes, 'is only one of the many consequences of the places being made boroughs.' ‡

The correctness of this opinion is not absolutely free from doubt. It is true that the old statutes did not expressly negative the right of the crown to create new parliamentary boroughs. The Act of 5 Richard II., already cited, merely requires that returns shall be made for 'any cities or boroughs which be bound and of old time were wont to come to parliament.' The Act of 23 Henry VI. c. 14, requires the sheriffs to send precepts to every mayor and bailiff of the cities and boroughs, and does not positively prohibit additions to the number of represented towns. But in accordance with the rule of law—*expressio unius est exclusio alterius*—it seems reasonable to understand that the description of particular places which were to send members to parliament, implied that others were not to do so. This view is confirmed by the course of subsequent

* Merewether, 'History of Boroughs,' p. 1837.
† *Ibid.* p. 1774. ‡ *Ibid.* p. 1773.

legislation. The statutes of the reign of Henry VIII., authorising the creation of new parliamentary seats for Welsh boroughs and for Chester, shows that the crown did not then claim the prerogative of creating such seats. The language of the charters of Elizabeth was to the like effect. The exclusive right of parliament to alter the representation was thus recognised by the crown. Until the corrupt times of Charles II. and James II., there does not appear to have been any direct and open attack upon that constitutional principle.

In the time of the Plantagenet kings the legal rule was simply this—the sheriff was required to send his precept to *every* city and borough for the election of citizens and burgesses. The parliamentary writs and the statutes are conclusive on this point—that they did not confer on him any power of selection. Sometimes, indeed, he illegally omitted to send his requisition to poor boroughs, which were deemed unable to bear the expenses of representation. In some instances, burgesses were exempted by the crown at their own request. Sometimes they simply disregarded the sheriff's mandate, and means were not taken to enforce it. But the old law undoubtedly was that every borough should be represented in the House of Commons. The creation of boroughs was, until the end of the reign of Edward III., left to the discretion of the crown ; but from that time to the present the prerogative has been abandoned—excepting in some instances under the Stuarts — and the sole authority of parliament to create new boroughs has been uniformly recognised.

CHAPTER IX.

THE BOROUGH ELECTORS.

THE concluding subject of our inquiry—the antient qualification of electors in boroughs — is comparatively easy. Materials for determining this question are much more readily accessible than those which relate to the suffrage in counties; for the antient records are more copious and explicit respecting the electoral rights of burgesses than with reference to the corresponding rights of voters in shires.

There is indisputable evidence that in the reign of Edward I., when parliamentary institutions became regularly established, and long afterwards, the electors in boroughs were *the resident householders liable to pay* scot and lot*. Before examining the evidence on which this conclusion is founded, it will be desirable to explain the nature of the custom of paying scot and lot.

It was a very antient custom. It was part of the common law of England in the time of Edward the Confessor, and was expressly recognised in the laws of William I. One of them provides (iii. 4), that 'every man French-born,† who in the time of Edward our kinsman was in England, a partaker of the English customs which they call hlote and scote, shall pay according to the law of the English.' ‡ *Scot* means a common fund arising from the contributions of many. Spelman derives the word from the Saxon *sceote*, to throw, because the scot was the collection of what was cast in by several. The word *sceote* seems to be the root of the English verb 'to shoot.' Matthew of

* The words 'liable to pay' are used advisedly. There is no warrant for supposing that a man was ever disfranchised for nonpayment of these charges. Arrears were recoverable, like other debts, by ordinary legal process; but it does not appear that the law in antient times superadded loss of municipal privileges as a penalty for default of payment.

† Francigena, *i.e.* of Norman origin. Kelham says (p. 216) that this was a general name for all persons who could not prove themselves to be English.

‡ 'Antient Laws and Institutions of England,' p. 211.

Westminster, in a sentence quoted by Spelman, says: 'That is called scot which is collected of several things into one heap.'

Lot is defined by Spelman to be the part of a tribute or payment which each of several persons is bound to pay. It seems to be used to designate any component part or item, which is the sense in which auctioneers now use the word. Thus, in a presentment of a jury of the High Peak in Derbyshire—cited by Spelman—it is said that the king's *lot* of lead, taken in the royal mines there, was every thirteenth pot of metal—(Rex solebat percipere le lot mineris, id est tertium decimum vas). Another use of the word *lot* occurs in 'burgelote' (otherwise 'burgbote'), the lot or contribution toward repairing the walls of a borough.*

The word *scot* was not confined to the revenue of boroughs. *Hundredeschot*, or *Hundredeshot*, or *Hundred scot*, is frequently mentioned in the 'Hundred Rolls' of Edward I. Thus at Tavernham, in Norfolk, three persons are returned as withholding twelve pence of hundredeschot, and two pence from the sheriff's turn.† Again, the Abbot de Becco Herlewin had withdrawn, and appropriated to his own use two shillings of hundredeschot.‡ In the return for Strepham, in Norfolk, it is said that the tenants of the church of Seynges were wont to pay scot (goddare et scottare) with the villans of the same vill to all charges.§

Another use of 'scot' as an affix occurs in the word 'Chirchescot' (of which 'Chyrchset' and 'Circset' are modifications. This was a payment to the Church of firstfruits of harvest, and was enjoined by the laws of Ina and the laws of Cnut.‖

Romescot, or Romepenny (in Saxon *romgescot* or *romsceat*), was another species of ecclesiastical scot. It was a penny for every hearth, payable to Rome on the Feast of S. Peter. It is enjoined by the laws of Ina and later Saxon kings, and was prohibited in England (39 Edward III.) A.D. 1365.¶

Another kind of scot mentioned in the 'Hundred Rolls' is the *shireveschot*, or sheriff's scot—apparently the same tax as that called the *auxilium vicecomitis*, or sheriff's aid. Another scot mentioned in the same record is '*wodewelschot*.' Thus, in the return for Northgrenehow, in Norfolk, Warin de Monte Caniso is said to withhold 'four shillings and tenpence halfpenny of a certain annual render called wodewelschot' (quodam

* Spelman, 'Glossarium'—*in voce* 'Burgbote.'

† 'Hundred Rolls,' vol. i. p. 527. ‡ *Ibid.* vol. i. p. 528. § *Ibid.* vol. i. p. 468.—Hundred scot is mentioned in the same return for Strepham, p. 470.

‖ Spelman—*sub voce* 'Circset.' ¶ *Ibid.*—*sub voce* 'Romescot.'

annuo redditu qui vocatur wodewelschot), from which expression it may be conjectured that this change was peculiar to particular localities. In the same returns shireveschot is twice mentioned.*

Scot is frequently mentioned in Domesday. For example, in an entry respecting Ipswich, mention is made of 328 houses which, in the time of the Confessor, paid scot (*scottabant*) to the gelt of the king. Again: 'In Colchester the bishop has fourteen houses and four acres not rendering custom except scot' —(non reddentes consuetudinem prœter scotum)—(Essex, fol. 14); and the burgesses of Colchester are elsewhere (fol. 104) said to have claimed five hides in Luxenhen to the custom and scot of the city.

'Let us enquire,' says Madox, with reference to the lot and scot in boroughs, 'who they were that were liable to bear the common burdens of the community, and in what manner the same were to be raised. The Kings of England having in several ages granted divers liberties to their towns, it became in some cases doubtful what persons were entitled to those liberties. For men that live in a town were not all of a sort. There were townsmen and suburbians, townsmen and co-inhabitants: in fine, some that were of the gild or gilds of that town, and some that were not. Many were willing to have the benefit of the common liberties, but were unwilling to have a share in the common burdens or payments. . . . The *communia onera*, or common burdens, were those things which were chargeable on the community, to be borne and defrayed by common contribution: for instance, the yearly ferme of the town, aids or tallages assessed *in communi*, common fines, common amerciaments, and suchlike. Every person willing to enjoy the franchise of the town was to contribute, according to his ability, to these public burdens or charges incident to the community. Indeed, the ferme of a town generally arose out of certain demised premises yielding profit, as I have shown above. But other *communia onera* were borne *in communi*, and were usually raised by apportionment amongst the townsmen, according to each man's ability or substance.' †

From the records of antient suits in the Court of Exchequer respecting the taxation of towns, we get much information upon this subject. The contribution of each man was reckoned according to the value of the goods and

* 'Hundred Rolls,' vol. i. p. 526.

† Madox, 'Firma Burgi,' chap. xi. sec. 5.

chattels which he had in the town. Thus, in an action in 28 Edward III., against the collectors of a fifteenth granted to the crown in the county of Northampton, there is a complaint that the lower division of the town of Heyford was assessed at a higher rate than the upper division; and it is said, that 'every man there ought to be taxed and assessed to the said sum, according to the quantity of his goods and chattels, in the same place, without favour shown to any one in that behalf.' Similarly, in a plea before the Barons of the Exchequer in the same year, with reference to the collection in Guildford of a fifteenth, and a tenth granted to the crown in Surrey, it is said that the sum due from the town 'ought to have been assessed among the men of the same town proportionately, according to the quantity of their goods, without favour to any one;' and the sub-collectors are charged with assessing the plaintiff above the proper rate.*

Any favour or exemption of townsmen in assessing the common burdens of a town seems to have been regarded with great jealousy. Thus, in the 'Hundred Rolls' (*temp.* Edward I.) in the returns for the city of London, there is a presentment to the following effect: 'Whereas the liberty of the city of London is one and common to all, and ought to be and is enjoyed in common—certain men of that city, enjoying that liberty, going against their own own oath, namely, Thomas, son of Ade de Basinges . . . . and others whose names are not known, have charters from our lord King Henry, that they shall not be taxed with their fellow-citizens, which is against the common justice of the city, whence the whole burden of the taxation, when it occurs (which is frequently), falls upon the poor and middle classes, and is to the destruction of the said city.' †

The governing officers of towns had power, by virtue of their office, to compel the burgesses to pay the taxes or quotas assessed upon them. If the mayor or ruling officers of a town could not compel any refractory persons to discharge these obligations, they might have aid from the king's officers. If the citizens and burgesses could not agree among themselves in assessing and raising the money, the sheriff of the county, by order from the Court of Chancery or the Exchequer, might apportion it among them.‡

It will be convenient to examine the qualification of burgesses chronologically—first, as it is described in Domesday; secondly, as it is defined in later documents. The language of Domesday

* Madox, 'Firma Burgi,' p. 281 *in notis.*

† 'Hundred Rolls,' vol. i. p. 408.

‡ Madox, 'Firma Burgi,' chap. xi.

is concise, and a difficulty is often occasioned by its silence respecting circumstances which were assumed to be notorious. The Survey does, however, show satisfactorily that, at the time of the Conquest, and previously, *the burgesses were the inhabitant-householders of boroughs.* This point is established in a very curious manner. In several boroughs there is an enumeration of the number of burgesses in the time of the Confessor, the number of houses which have since become uninhabited, and the number of burgesses at the time of the Survey. The latter number is in these cases the difference of the two former; and, consequently, the irresistible inference arises, that the number of burgesses was reckoned by the number of inhabited houses. Thus, in the account of Derby in Domesday (fol. 280), it is said that there were in that place, in the time of Edward the Confessor, 243 burgesses. At the time of the Survey there were 100 burgesses and 40 lesser burgesses, and 103 houses uninhabited (*mansiones wastæ*). The sum of the numbers $100 + 40 + 103 = 243$, the previous number of burgesses; and this computation shows very clearly that, at both periods, every inhabitant-householder was a burgess. So in Ipswich (fol. 289 *b*), it is recorded that, in King Edward's time, there were 538 burgesses who paid customary rent to the king. At the Survey there were 110 who paid the rent, and 100 poor burgesses who paid a penny a head, and 328 *mansiones* which had paid geld were wasted. Here $110 + 100 + 328 = 538$. That is to say, the total number of burgesses of the former period is reckoned by adding the numbers of burgesses and of uninhabited houses at the later period. Of Thetford it is stated that, 'In the borough there were 943 burgesses in the time of King Edward; of them the king has all custom. Of these men, 36 so belonged to the demesne of King Edward, that they could not be the men of anyone else without license of the king: all others could be men of anyone; but always, nevertheless, the king's custom remained, except heriot. Now, there are 720 burgesses and 224 vacant houses.'*

* In burgo autem erant DCCCCXLIII burgenses tempore Regis Edwardi. De his habet Rex omnem consuetudinem. De istis hominibus erant XXXVI ita dominice Regis Edwardi ut non possent esse homines cujuslibet sine licentia Regis. Alii omnes poterant esse homines cujuslibet; sed semper tamen consuetudo Regis remanebat præter herigete. Modo sunt DCCXX burgenses et CCXXIIII mansuræ vacuæ.—*Domesday*, vol. ii. fol. 118 *b*.

The numerals are here given as they appear in the printed edition of Domesday; but the conjectural emendation suggested above has been confirmed by an examination of the original document in the Record Office. I am informed that a fourth I after the one which now terminates the DCCCCXLIII has been rubbed nearly out, apparently by accident: also a third C in the numeral DCCXX has been erased, apparently on purpose.

Here there is probably a numeral (I) omitted in the DCCCCXLIII. With that correction, we find that, as before, the later number of burgesses, together with the number of vacant houses, makes up the former number of burgesses (720 + 224 = 944). It is material to observe, also, that only a few of the inhabitants are the king's tenants. By far the greater part of them, it is expressly stated, may hold of whatever landlord they please, so that burgess-right depended not on tenancy, but on inhabitancy. All the inhabitants, without distinction, pay the king's custom, except heriot, which was a landlord's charge.

Similarly, in Norwich (fol. 116 *b*), among the burgesses are 32, of whom Harold had *sac* and *soc* at the time of the Confessor. It is added that, on the land of which Harold had the *soc*, there are now 15 burgesses and 17 empty houses. The sum of the two latter numbers (17 + 15) is equal to the number (32) of burgesses who held of Harold.

In a remarkable record, the Cottonian Register of Evesham Abbey, cited in Sir Henry Ellis's 'Introduction to Domesday,' there is similar evidence. This Register 'contains returns, possibly those which were made to the Commissioners who formed the Domesday Survey, and were afterwards abridged.'* The returns state that, 'in the time of King Edward, there were in the city of Gloucester 300 burgesses in the demesne, paying eighteen pounds and ten shillings of gable by the year. Of these, 97 are resident in their own inheritance, and 97 dwelling in hired houses . . . . And within the castellum dwell 24 of these 300, and 82 *mansiones* are waste.' Here 97 + 97 + 24 + 82 = 300, or the number of householders added to that of vacant houses makes up the aggregate number of burgesses before the Conquest.

Besides this arithmetical argument, there are various proofs to the like effect from expressions in Domesday connecting burgess-ship with inhabitancy. For example, at Shrewsbury, in the time of the Confessor, there are said to have been '252 houses, and as many burgesses in the same houses paying gable'† —a proof that all the householders there were burgesses. In Northampton it is stated that, 'in the time of King Edward there were in Northantone, in the king's demesne, LX *burgesses having so many houses* (totidem mansiones) : of these, XIIII are wasted. There remain XLVII. Besides these, there are now, in the new town, XL burgesses in the demesne of King William.'‡

* Ellis, 'Introduction to Domesday,' vol. ii. p. 445.

† Domesday, vol. i. fol. 252.

‡ *Ibid.* vol. i. fol. 219.—The numerals are here given as they appear

The word geld (*geldum*), which occurs in some of the foregoing extracts, is used in Domesday for Danegeld, a tax which was, by law, imposed in the time of the Saxons. This tax was originally instituted to defray the expense of resisting the incursions of the Danes. By the laws of Edward the Confessor, it was enacted that Danegeld should be paid annually, at the rate of twelvepence for every hyde of land throughout the country. It was continued after the Conquest. Spelman says, he finds no mention of Danegeld after the reign of King Stephen, though it did not then cease, but was designated the *tallage*, in the language of the Normans, and the *tax* in English.* By the Domesday Survey the Conqueror was enabled to fix the proportion of the Danegeld on the property of each landholder. Danegeld occurs only in one place, by its own name, in the Survey; in all other places it is called Geld.†

The payment of Gelt, or any any other payment to the crown, did not constitute burgess-ship. This is evident from the reference in Domesday to various burgesses, who paid nothing to the crown. Thus, in Buckingham, in an enumeration of burgesses who were the tenants of different landlords, mention is made of 'two burgesses who were men of Earl Leuvin; they pay sixteen pence, and to the king now nothing'—(ii. burgenses qui fuerunt homines Leuvini Comitis; hi reddunt xvi. den. et Regi modo nichil). They are expressly called burgesses, and are stated to be exempt from all payments to the crown. In the same borough there are mentioned 'four burgesses who were men of Eddeva, the wife of Syred. They pay twenty-nine pence; to the king they owe nothing.'‡

Neither was tenancy of land belonging to the crown a condition of burgess-ship, nor was the possession of any freehold necessary. In the extracts from Domesday already given, there are references to lessees and occupiers under private landlords who were burgesses. In Thetford, of 943 burgesses, only 36 were the king's tenants. In Gloucester there were, in the king's land, 97 persons living on their own inheritance, and 97 others in hired houses, for which they paid rent; besides a great number of tenants of various landlords, some of whom had 50 or 60 tenants, and some

in the original record, which, I am assured, has no vestige of erasure. But it is clear that there is an error of a unit in the enumeration.

* Spelman, 'Glossarium'—*sub vocibus* 'Danigeldum,' 'Geldum.'

† Ellis, 'Introduction to Domesday,' vol. i. p. 351.

‡ Domesday, Buckingham, fol. 143.

only one or two.* In almost every borough of the kingdom there were burgesses who were tenants of private persons. In Romenel 85 burgesses held under the archbishop. In Bath, besides burgesses holding under the king, 90 are enumerated who were tenants of other persons. In Hereford, after an enumeration of king's tenants, it is expressly stated that Earl Harold had 27 burgesses having the same privileges as others. At Buckingham and Colchester, and many other places, there are similar enumerations. Sometimes burgesses in towns were tenants of manors far distant from them. Thus, one manor at Beddington, in Surrey, had 15 houses in London belonging to it, and another had 13 houses there, besides 8 in Southwark. The Abbey of Romsey had 14 burgesses in Winchester: the Church of St. Denys, at Paris, had 30 burgesses in Gloucester.†

It is not necessary to multiply instances of this kind. It is abundantly evident that, in the time of Edward the Confessor, and when Domesday was completed, the burgesses in boroughs were simply the inhabitant-householders. There is not the slightest reason for supposing that those who were king's tenants had any peculiar privileges. They are continually enumerated with other burgesses, and there is no mention or suggestion of any distinction between them.

In Dr. Brady's treatise on Boroughs it is asserted that, at the period to which Domesday refers, the burgesses or tradesmen in great towns had 'their patrons, under whose protection they traded, and paid an acknowledgment therefor; or else were in a more servile condition, as being *in dominio regis vel aliorum*.'‡ But, certainly, the passages from Domesday which he cites do not warrant these inferences. There is not a word in them about burgesses being under anybody's patronage. Expressions frequently occur, to the effect that burgesses belong to particular manors, or are in the domain of particular persons; but these are merely concise modes of stating whose tenants the burgesses were.

The instances in which burgesses are clearly identified, in Domesday, as all the inhabitant-householders of a town, are so numerous, and apply to so many different parts of the country, that they must be taken to show the general meaning of the word *burgenses*, as it is used in the Survey. It is true that in some of the returns, with respect to boroughs, other classes besides burgesses are mentioned. Thus, at Buckingham, it is

* See 'Register of Evesham Abbey,' cited in Ellis's 'Introduction to Domesday,' vol. ii. p. 446.

† Ellis, 'Introduction to Domesday,' vol. i p. 207.

‡ Brady, 'History of Boroughs' (ed. 1777), p. 27.

stated that there were 'twenty-seven burgesses, eleven bordarii, and two serfs.' But it appears, by the context, that the assessment of the town included a large tract of land which was cultivated by some of these persons. For instance, with reference to a part of this land, it is said: 'Bishop Remigius holds the church of this borough, and four carucates of land, which belong to it. There are four ploughs, and three villans, and three bordars, and ten cotars, one mill of ten shillings, meadow two carucates, wood for fences.'* So in other places, where bordars and other classes are mentioned in the same returns with burgesses, the context shows that they cultivated land outside the town.

The general conclusion that the qualification of a burgess was, in the period to which Domesday refers, simply the occupation of a house in a borough, is of the utmost importance with reference to the later history of municipal franchises. Shortly after the Conquest, the grant of charters to the 'burgesses' or to the 'men' of boroughs became, as we have already seen, frequent. But no law was enacted, giving a new and more restricted meaning of the word 'burgess.' Nor is there the slightest evidence of any change in the customary signification of the word. The inference is irresistible, that in the charters granted from the time of the Conquest until long after the permanent establishment of parliamentary institutions, the whole body of householders was enfranchised.

The language of the charters themselves tends to the same conclusion. A charter given by Henry III. to Bristol granted, among other privileges, that the *burgessess* and their heirs, *burgesses* of the same town, should be empowered from among themselves to choose and create a coroner. Since the coroner was necessarily a resident officer, and the burgesses were to choose him from among themselves, it seems plain that the burgesses were assumed to be resident.†

Shrewsbury, at an earlier period, affords an instance of a reference to *scot and lot*, as an evidence of the right to enjoy municipal privileges. In 11 John (A.D. 1211), a charter was granted to the burgesses of Shrewsbury, which provided that no one should buy and sell certain commodities within the

* Domesday, vol. i. fol. 143.—The 'carucate' varied in different times and places. Sir Henry Ellis has collected ('Introduction to Domesday,' vol. i. p. 151) several authorities which give different estimates of it; the lowest being 60, and the highest 180 acres.

† Merewether, 'History of Boroughs,' p. 459.

borough, unless he were in *lot*, and in assizes, and talliages with the burgesses.*

'Assizes' here apparently means assessments. The criterion of the right to trade in Shrewsbury was liability to the public charges to which the burgesses contributed.

To the same effect is a charter of 11 Henry III. to Gloucester, which, among other franchises, provided that if any villan by birth should continue for a year in the said borough, and should be in market gild and toll (gilda mercatoria et hansa),† and in *scot and lot* with the burgesses for a year and a day without claim, then he should not be recovered by his lord, but should remain free in the same borough. Clauses of this kind were frequently inserted in antient municipal charters.‡

A relevant passage in Glanville strongly confirms the opinion that, at the time when he wrote, residence was the test of burgess-ship. Speaking of the mode in which neifs or born slaves may be emancipated, he says: 'Also if any neif abide quietly for a year and a day in any privileged town, so that he is received into their common gyld as a citizen, he shall thereby be liberated from villenage.'§ Here the process of acquiring the right of citizenship is described as consisting in residence for more than a year within the borough, and being received into the common gyld. The word *gelda* (or *gylda*) is used in antient documents as the equivalent of *lot*, and therefore it seems clear that the latter of the conditions to which Glanville here refers imports liability to scot and lot. ‖

A passage in the charter granted to Helston by King John, in the second year of his reign, expressly provides 'that none of the aforesaid burgesses, unless he be resident in the said town of Helleston, shall have these liberties.'¶

Residence was the qualification for burgess-ship, and payment of scot and lot its chief obligation. But it was not the only obligation. If a man used the franchises of a borough, he was required to take his share of all the other duties to which the

* Madox, 'Firma Burgi,' p. 270.

† Hansa—Pensitatio pro mercibus exsolvi solita.—*Du Cange*, '*Glossarium*': in voce.

‡ Madox, 'Firma Burgi,' p. 271.

§ 'Item si quis nativus quiete per unum annum et unum diem in aliqua villa privilegiata manserit, ita quod in eorum communem gyldam tanquam civis receptus fuerit, eo ipso a villenagio liberabitur.'—*Glanville*, lib. v. chap. 5.

‖ This point seems to be established by reference to a charter of Edward I. to Hull (cited hereafter). The grant is in Latin, and is founded on a petition in Norman-French. The latter mentions 'lot et eschot.' The corresponding phrase in the charter is *geldam et scottum*.

¶ Brady, App. No. viii.

burgesses were liable in common. This appears by various law-proceedings against persons who had shared the benefits without the burdens. In 29 Henry III. the men of Castre, in Lincolnshire, brought their action against the Abbot of Grimsby, and others by name, because 'they refuse to participate with the said men in talliages, *suits of courts*, and other customs pertaining to our ferm of Castre; so that the said men are not able to answer to us fully for the said ferm, although the above-named parties participate with the said men in trading, and all other liberties of the said town.' In 40 Henry III. the men of the suburbs of Warwick claimed and enjoyed the liberty of trading in that town, but were unwilling to partake with the townsmen in common amerciaments. The inhabitants of the town and suburbs were summoned to the Court of Exchequer, that the barons might determine the matter between them. In 42 Henry III. an agreement was made between the Augustines' Abbey at Canterbury and the citizens of that city, that the tenants of the abbey who traded in the city 'should be in lot and scot, and in talliage, and defence of them against all, as they had before done.'*

From these examples, it is apparent that every one who enjoyed the rights of citizenship was required to take his share of all its obligations. In the case of Castre, suits of courts, that is attendances on juries, are expressly included among those obligations. In the case of Canterbury, it is made a condition of the enjoyment of civic privileges that the persons admitted to them shall join in the public watch and defence of the town.

The antient municipal records of Ipswich present a most interesting account of the local government of that town in the reign of King John. In the first year of his reign he granted a charter to the *burgesses* of this borough, providing, among other things, that they should hold their lands, pledges, and dues, according to the customs of the borough of Ipswich, and of the king's free boroughs. The rolls of the borough, made shortly afterwards, state the proceedings thereupon as follows:—The *whole town* being assembled in the burial-ground of S. Mary's, to elect two bailiffs and four coroners, according to the charter then lately granted by King John—it was ordained that there should be twelve Chief Portmen, sworn in the same manner as they are in other free boroughs in England; that they should have full power for themselves, and the whole town, to govern and maintain the borough, and all the liberties of the same—to render judgment of the town, to ordain and do all things in the

* Madox, 'Firma Burgi,' p. 271.

borough which ought to be done for its state and peace: *the whole town to assemble* in the burial-ground after the Feast of SS. Peter and Paul, to elect the said Chief Portmen — on which Sunday the *whole town* accordingly met before the bailiff and commoners,* to elect the said twelve Chief Portmen; and the bailiff and coroners, by the assent of the town, elected four good and lawful men of every parish of the town, who were sworn to elect twelve Chief Portmen of the most discreet and worthy of the town, to ordain for its state.

The record states that the portmen took an oath of office, and proceeds: 'As soon as they were sworn, they caused the *whole of the townsfolk* to stretch their hands towards the book, and with one voice solemnly to swear to be obedient to the Bailiffs, Coroners, and Chief Portmen, and to maintain the town and the new charter.'†

This narrative shows that in Ipswich, at the commencement of the thirteenth century, the burgess-suffrage was almost unlimited. The whole town assembled in an open place, where exclusion of non-electors would have been impracticable, and, in a very methodical way, appoint four persons of each parish, to whom is assigned the responsibility of selecting the portmen. The whole body of townsfolk afterwards ratify the selection by a collective oath. And yet there is nothing to show that the case of Ipswich was exceptional; on the contrary, the usage of other boroughs is expressly said to have been followed. Its charter is similar in character to those granted to many other places before and after this period. The great value of the record consists in this—that it affords a commentary upon the antient municipal charters and privileges, not of a single town merely, but of the whole kingdom.

When we reach the era of settled parliamentary institutions—the reign of Edward I.—we find no substantial change in the language of borough charters. Occupancy and taxability continue to be the test of burgess-ship. A petition (in Norman-French) of the men of Kingston-on-Hull, in 26 Edward I. (A.D. 1298) for certain franchises, prays 'that no one may enjoy the franchises undermentioned, except the tenants of the said town who are, or are willing to be at lot and scot with those of the town' —(forsque le tenantz de meisme la Vile qui sont et estre volent a Lot et Escot ove ceux de la Vile). The charter (in Latin) granted on this petition has a clause, 'That all those of the said

* *Sic* in Merewether's abstract of this record.

† Merewether, 'History of Boroughs,' p 393.

burgh, wishing to enjoy the said liberties and free customs, shall be at geld and scot with the same burgesses as often as the borough happens to be taxed'—(sint ad geldam et scottum cum eisdem burgensibus quociens burgum illum contigerit talliari).*

Conversely, if a man did not enjoy the municipal privileges, he was not liable to the municipal burdens. This is shown very clearly by the exemptions allowed to foreigners by the Court of Exchequer, in several cases occurring in the reign of Edward II. In 9 Edward II., certain merchants of Amiens apply for relief from an assessment in Cirencester. They allege that 'they are not citizens or burgesses anywhere within the realm of the king, nor have any domiciles, lands, or tenements within the same kingdom, except certain shops in Cirencester, which they hire for reception of their merchandise till they can sell it.' Their claim of exemption is allowed. Another case of Cambinus Fulbert, a merchant of Florence, in 19 Edward II., shows plainly that the ground of exemption was not alien-birth, but the exclusion from burgess-ship. This man, in his application to the Exchequer, expressly describes himself as a citizen of London at that date, but claims exemption from an assessment for a fifteenth granted to the crown at a much earlier date—the *first* year of the reign. The Register of the Chamberlain of London is searched, and it is found that he was admitted to the freedom of the city in the *seventeenth* year of the reign.† And thereupon his claim is allowed. Obviously, the ground of the decision was, that his admission to the freedom of the city was subsequent to the date of the grant to which he was sought to be made liable. Consequently, mere residence without citizenship did not constitute a liability to scot and lot. If residence alone created the liability, it would have been superfluous to search the City Register.

This case, and the other authorities already cited, suggest that payment of scot and lot was not an antecedent qualification for burgess-ship, but an incident of it. There is no trace of a law by which the payment was made a condition precedent to the enjoyment of borough privileges; or by which burgess-rights, when acquired, could be subsequently lost by default of such payments. The qualifications appear to have been, simply, residence and the occupation of a house. The consequent liability to local burdens was enforceable by various legal processes, but not, so far as we have any evidence, by

* Madox, 'Firma Burgi,' chap. xi. sec. 4.
† *Ibid.* p. 274.

disfranchisement. This distinction seems to be very commonly overlooked. It is usually assumed that, unless a man paid scot and lot, he was debarred from the franchise. The statement is not accurate. The liability to scot and lot, and not the actual payment, was a test of the right of burgess-ship.

It was well settled, at an early period, that the enjoyment of municipal privileges in cities and boroughs was restricted to *residents*, and that burgesses were not entitled to exercise their franchises anywhere but in the town in which they resided.

This point was decided in parliament in the reign of Henry IV. In the eleventh year of that reign, Thomas Chaucer, the king's butler, presented a petition, complaining of gross abuses of the privilege granted by charter to the citizens of London, exempting them from paying the charge called 'prisage' upon wines. The answer to the petition was, 'The king will send for the mayor and aldermen of the said city; and further has declared, by the advice of the lords in parliament, that none hath or enjoys such freedom in this case, if he be not a citizen resident, and dwelling within the same city. And that all others dwelling in other cities, boroughs, or towns have and enjoy their franchises to them granted.'* That is, burgesses were to be content with the franchises of the towns in which they resided, and were not to participate in the local privileges of other places.

There was a still earlier decision—Otes's case, in 38 Edward III. —which shows that a citizen of London, in order to enjoy the peculiar privileges of that city, with respect to the devise of land, must be resident, and in scot and lot there. The case is in the 'Liber Assisarum' of 38 Edward III. pl. 18. The following is a translation of part of it: 'Fincheden for the king say, that he well granted that the citizens ought to have such franchise, *scilicet* those to whom the franchise extends, *scilicet* those who are born and inheritable in the same city by descent of heritage, or who are residents, and taxable to scot and lot.' The case was adjudged accordingly.†

It is also clear that *inmates* or *lodgers*, not being householders,

* Le Roy voet envoier pur les Mair et Aldermans de dite citee. Et en outre ad declarez par advys des Seigneurs en Parlement que nully n'eit ne enjoise tiele Fraunchise en ceo case s'il ne soit citezein receant et demurant deins mesme la Citee. Et que toutz autres demurantz en autres Citees Burghs ou Villes eient et enjoisent lour Franchise a eux grauntee.—*Rot. Parl.* 11 Henry IV. vol. iii. p. 646.

† 'Juridical Arguments and Collections,' by Francis Hargrave (London, 1797), p. 496.

were not entitled to municipal privileges. There was a direct adjudication upon this point in the Exchequer in the reign of Queen Elizabeth, of which the following account is given in the 'Reports' of Sir John Davys. Referring to the antient impost of prisage, and the charters of exemption granted to the citizens of London and of the Cinque Ports, he says: 'The charter of London was allowed in this point in the Exchequer of England (44 Elizabeth). But the question there was, if a citizen of London, who has not a family, nor pays scot and lot, *but sojourns in the house of another*, shall have the benefit of the said charter. In the argument of which case, Coke, then Attorney-General, put this difference of citizens — viz., that there is a citizen *nomine*, a citizen *re*, and a citizen *re et nomine*. But it was resolved that only the citizen *re et nomine*—viz., he who is a freeman of London, and also inhabits and pays scot and lot there—shall be free of prisage by the said charter.'* The learned Mr. Hargrave, commenting upon the original Latin record in this case, says: 'From this abridgment of the Latin record it is plain that, according to the solemn judgment of the Exchequer in this case, a freeman of London, to have the benefit of exemption from prisage, must be *not only resident*, but also a *householder*. It is also apparent that the court so construed *cives* in the charter of Edward III., in spite of an uninterrupted usage of fifty years, found by the jury in favour of resident freemen being only *inmates* and *lodgers*.' †

This precedent is somewhat late. But it is clear that the court declared what was considered to be the antient law, for a contrary custom of fifty years' standing was expressly overruled. The exemptions in question were so valuable, that we may be certain that, if there had been any antient authorities in favour of extending the privilege to inmates and lodgers, they would have been produced on the part of the defendants.

The authorities just cited relate to the special privileges of citizens respecting prisage and devise of lands, but they involve a more general principle. They show who are the persons entitled to municipal privileges of all kinds; for the borough franchises of every description were granted to the same persons indistinguishably.

It may, therefore, be safely inferred that taxable householders only, and not lodgers, were in general entitled to such rights. The only exceptions to this rule were one or two boroughs in the

* Sir John Davys, 'Le Primer Report des cases et matters en ley' (Lond. 1628), fol. 10 (Le case de Customes).

† Hargrave, 'Juridical Arguments and Collections,' app. xlii.

West of England, where (as will be shown hereafter) lodgers, under the name of *potwallers*, have at one period of our history enjoyed the right of voting for members of parliament.

We have, then, clear evidence of the nature of the burgess-qualification in the fourteenth century. This point being ascertained, the question, 'Who were the parliamentary electors in boroughs?' is free from difficulty. Undoubtedly they were the general body of *burgesses*. There is not, indeed, any express enactment upon the subject until the fifteenth century; but in the reign of Henry VI. we find, on the records of parliament, a retrospective statement of the antient electoral law, which is quite conclusive. A petition in parliament by the commons to the crown is the foundation of the statute 23 Henry VI. cap. 14, respecting elections in shires, cities, and boroughs. The petition and the statute agree nearly verbatim; but there is one remarkable difference between them, which has certainly not received adequate attention. The statute recites a previous Act of 1 Henry V., which provided, 'That the citizens and burgesses of cities and boroughs coming to the parliament should be chosen men, citizens and burgesses resident, abiding and enfranchised in the same cities and boroughs,' and adds to this recital—'The which citizens and burgesses, and no others, have at all times been chosen in cities and boroughs'—(lez queux citezeins et burgeisez et null autres ont tout temps en citeez et burghs estez eslieux).* But when we turn to the corresponding passage of the parliamentary petition, we find a remarkable and important variation. The words there are, 'the which citizens and burgesses, *by citizens and burgesses*, and no others, have at all times been chosen in cities and boroughs'—(lez queux citezeins et burgeyses, par citezeins et burgeyses, et null autres ount tout temps en citees et burghs estez esluz).† The additional words entirely alter the sense of the passage, and the context indicates that they are omitted from the statute accidentally.‡ The *petition* states that the *electors* have been citizens and burgesses. The statute (if construed literally) states that the *elected* have been

* 'Authorised Edition of the Statutes,' vol. ii. p. 340.

† 'Rot. Parl.' vol. i. p. 115.

‡ It is remarkable that the old translation of the Statutes renders the passage under consideration as follows—'Which citizens and burgesses have always, in cities and boroughs, been chosen by citizens and burgesses, and no other.' This version agrees exactly with the parliamentary petition, but not with the statute itself. The old translation of the Statutes into English, as Serjeants Hawkins and Ruffhead observe, has obtained a kind of prescriptive authority.

citizens and burgesses; but the latter statement is surplusage, because it immediately follows a recital of an existing law to that effect. Moreover, a subsequent part of the statute (agreeing in that respect with the petition) provides that any mayor or bailiff shall forfeit forty pounds if he shall return 'others than those who are chosen by the citizens and burgesses, of the cities or boroughs where such elections are, or shall be made'—(autres que ceux qui sont esluz per lez citezeins et burgeisez dez citeez et burghs ou tielx elections sont ou serront faitz).

The statute and parliamentary petition of 23 Henry VI. agree, then, that the electors in cities and boroughs were 'the citizens and burgesses,' and the petition adds that this had been the practice in all times. This evidence is conclusive. On the very highest possible authority, we have here a definition of the qualification of borough electors; and that definition, though very brief, is perfectly precise. The electors are not 'burgesses,' but '*the* burgesses,' and the petition adds that no one else was allowed to participate in the election. In other words, the entire body of townsmen entitled to the municipal franchise, and they alone, were the electors of representatives in parliament.

The records of earlier date, though less explicit, are completely consistent with this conclusion. They contain no indication of the existence of a select constituency in towns. The writs to the sheriffs of the date 23 Edward I.—which is the commencement of the regular representation of boroughs—require each sheriff to cause to be elected of his county two knights, and of each city of the same county two citizens, and of every borough two burgesses — 'so that the said knights shall then have full and sufficient power for themselves and the community of their respective counties, and the citizens and burgesses for themselves and the community of their respective cities and boroughs, to do what of common council shall be ordained in the premisses, so that, on account of defect of this power, the aforesaid business shall not remain in any manner uncompleted.' The elected citizens and burgesses were to receive full power for the *community* of the cities and boroughs: the business of parliament was not to be stopped by any defect of the power to be conferred on these delegates. Is it not clear, from these expressions, that they were regarded as the law at this day regards persons invested with authority, by 'powers of attorney,' to perform various legal acts in the name of their principals? Is it possible to doubt that the persons nominated

were to be attorneys or agents appointed by the communities in whose name they acted?

Many writs addressed to particular cities and towns in the fourteenth century show that the election of their representatives was to be made by the whole body of citizens. In 27 Edward III. a writ to the bailiffs of Boston, in Lincolnshire, commands them to cause to be chosen two burgesses, 'by the assent of the said town'—(de assensu ejusdem villæ). A writ to Bristol of the same date is in the same form; and the return to it states that two persons have been chosen, 'by the assent of the *community* of the same town'—(de assensu communitatis villæ prædictæ). So the contemporaneous return for Exeter is entitled, 'The answer of Robert de Bridport, mayor of the city of Exeter, and Richard Oliver and Thomas Spicer, bailiffs of the same city, and the community of the same city.' A return of the city of London, in 12 Edward II., is in still more general terms: it is made in the names of 'the mayor of the city of London, the aldermen, sheriffs, and *whole community* of the same city.' A still earlier return, for a parliament to be held at York in 26 Edward I., from Derby, states that the bailiff 'has chosen, by the assent of the whole of the said town'—(assensu communitatis totius ville predicte)—two persons named.*

It would be easy to multiply such instances. Generally, the returns are merely brief records of the names of the elected burgesses and their manucaptors, or sureties, for their due appearance in parliament. But wherever there is an incidental mention of the mode of election, it indicates that it has been made by the assent of the whole community of the towns represented.

The only mode of resisting the obvious inference from these documents is that adopted by Dr. Brady—that the words are to be interpreted in some non-natural sense; that when the returning officers speak of election by the whole town, or whole community, they do not mean the whole town or whole community, but something else.† Dr. Brady asserts, a great many times, that the government of towns, at the period under consideration, was in the hands of select corporate bodies. But he does not give any tittle of evidence in support of this assertion. On the contrary, it is shown, by the authorities cited in the preceding part of this chapter, that the municipal franchise, in the reigns of the early Plantagenet kings, was enjoyed by the whole body of inhabitant-householders of boroughs.

* Brady on Boroughs (ed. 1777), pp. 133-140.

† *Ibid.* p. 132.

Some very remarkable documents of the borough of Lynn, in Norfolk, in the possession of the corporation, furnish curious and instructive information respecting the government of that town in the fourteenth and fifteenth centuries, and the peculiar method then adopted for electing burgesses to serve in parliament.

In Merewether's 'History of Boroughs,' one or two extracts from these records are given, and the learned authors state that they have examined the originals. Also in the twenty-fourth volume of the 'Archæologia' (1832, p. 317), there are 'extracts from a manuscript containing portions of the proceedings of the corporation of Lynn Regis, in Norfolk, from 1430 to 1731, taken from the Hall books,' and communicated by Mr. Hudson Gurney, who states that the records in the possession of the corporation are 'somewhat imperfect from 1392 (15 Richard II.) to 1453 (32 Henry VI.), from which date they are perfect to the present day.' Mr. Gurney's extracts commence in 1430; those of Serjeant Merewether are considerably earlier.

In these Hall books we find the remarkable fact, that burgesses to serve in parliament were repeatedly elected by *twelve jurymen*. In 1376 (50 Edward III.), the burgesses to parliament were so chosen on two several occasions.* Serjeant Merewether conjectures that the jury which performed this function was the Leet Jury. But the extracts from the 'Archæologia,' presently to be given, show that this conjecture is not correct, and that the jury was appointed specially for the purpose of the election, in a very peculiar manner.

For the election in 1378 (2 Richard II.), the procedure is thus described in the record:—

'On the same day, the mayor and *commonalty* caused to be chosen two discreet men—viz., Nicholas de Luerdeston and Hugh de Ellyngham—to be present in the parliament of our lord the king, to be held at Gloucester, on Wednesday next after the Feast of S. Luke the Evangelist, by virtue of a writ on that account directed to the aforesaid mayor and commonalty, by John Locke,' and eleven other persons, who are stated to have been sworn.†

The following entry also occurs: 'On the aforesaid day were elected, for the parliament to be held at Westminster, at the Feast of S. Martin, John de Wentworth and Thomas Waterden, by Robert Kene,' and eleven others sworn.‡

* Merewether, 'History of Boroughs,' p. 653.

† *Ibid.* p. 760.

‡ *Ibid.* p. 761.—The date of this extract is not given. Apparently it was

It is apparent that the commonalty did not surrender, by this procedure, their control of the election; they merely delegated the task of making a fit selection to twelve burgesses appointed by their sanction.

This appears clearly from the following account of an election (January 7, 1436):—

'John Ashden and John Syff, of y^e^ Twenty-four, John Adams and Bartholomew Colles, of y^e^ common council, were called by y^e^ mayor, by y^e^ assent of y^e^ whole congregation, who called Edward Mayne and John Spryngewell, and they called Galfrid Gatele and John Mariat, and the foresaid eight called William Kyrketon and Thomas Lok, and y^e^ foresaid ten called Thomas Talbot and Martin Wrighte, which twelve were charged (being sworn according to custom to preserve y^e^ liberty of y^e^ town), to chuse two burgesses for y^e^ borough of Lyn, to go to the parliament on the 21st day of January next ensuing, to be held at Cambridge or London, according to y^e^ form of y^e^ writ lately delivered to y^e^ mayor aforesaid. They chose burgesses for the said town—Thomas Burgh, John Warryn.'*

In this borough there was, at the date of this transaction, besides the common council, a committee of Twenty-four—a self-elected body. This appears from an extract, from the same manuscript, under the date, September 21, 1432: 'Afterwards the Mayor and Twenty-four entered y^e^ chamber, and in y^e^ room or place of Bartholomew Pettipas and Philip Frank, lately deceas'd, chose John Waterden and John Boucher into y^e^ Twenty-four.' It is not known what the functions of this body were, and how it originated. It is found existing at Lynn at a period earlier than the charter of Hull—to be noticed presently—which is considered the earliest instance of a charter of municipal corporation. Apparently, at Lynn, the peculiar form of municipal government existed by prescription and arrangement among the townsmen themselves, without the sanction of a charter.

about A.D. 1399, or a little earlier; for in the list of burgesses returned for this borough, given by Prynne in the 'Fourth Part of a Brief Register' (p. 1024), the following occurs: '21 R. 2 P. ap. West. Johes. Wentworth, Rogerus Rawlin. 1 H. 4 P. ap. West. Robtus. Bodeksham, Thomas Waterden.' As Wentworth's name occurs only here, it may be conjectured that he was returned at this time, and Waterden either with him, or nearly at the same time. There is an error somewhere in the transcription of the names. The regnal year 21 Richard II. commenced in A.D. 1397—1 Henry IV. commenced in A.D. 1399.

* 'Archæologia,' vol. xxiv. p. 320.—The manuscript book from which this extract is taken, is stated by Mr. Gurney to be 'a translation, in its earlier parts, probably made by some townclerk for his private use.'

The account of the procedure on January 7, 1436, shows that the choice was made by a jury appointed with the sanction of the commonalty. The process of constituting this jury was as follows:—First, the mayor, with the *assent of the whole congregation*, selected four; these chose two others; the six chose two more, and so on, until a complete jury of twelve had been called. They were then sworn, 'according to custom'—an expression which shows that this method of procedure at elections of members of parliament was usual in the borough.

The election of these burgesses was ratified, nine days afterwards, by the general body of the electors. This appears by the subsequent entry: 'Jan. 16.—The same day was sealed, under the common seal, a letter for y^e^ authority of John Warryn and Thomas Burgh, burgesses of parliament.' So on another occasion (June 17, 1433), when burgesses had been similarly chosen by a jury, we find a fortnight afterwards: 'July 1.—Then also was seal'd y^e^ warrant for the burgesses of parliament.'*

There are other entries, which show very plainly that at this period the representatives represented the general municipal body, and consulted its wishes. Thus, with reference to Thomas Burgh and John Warryn, above mentioned, we find, under the date February 20, 1436-37: 'The same day was read a letter sent to y^e^ mayor, by y^e^ burgesses of Lyn, remaining in parliament for y^e^ said town, which letter being fully understood, it was appointed, by *the assent of y^e^ whole congregation*, y^t^ an answer should be return to y^e^ said letter, by the mayor aforesaid, under y^e^ seal of y^e^ office of mayoralty of Lyn.'

'1437, April 4.—The same day Thomas Burgh and John Warryn, burgesses of y^e^ last parliament for Lyn, did well and discreetly declare those things which were substantially done and acted for y^e^ mayor aforesaid, in y^e^ parliament.'

Thus it appears that what we now often call 'extra-parliamentary utterances,' are recommended by precedents of venerable antiquity. The following are entries to the like effect—1432, July 23: 'John Waterden reported y^e^ transactions of parliament.' 1442, April 18: 'The said day y^e^ burgesses of y^e^ last parliament—viz., Richard Frank and Walter Curson—discretely and seriously declar'd several transactions of y^e^ said parliament.' The material point in these records is that the representatives consulted the inhabitants generally, and were deemed responsible to them. With regard to the election in January 10, 1441-42, of the persons last mentioned, it is said: 'And it was *the same day* also ordered, by *y^e^ assent of y^e^ whole*

* 'Archæologia,' vol. xxiv. p. 320.

congregation, y^{t} y^{e} burgesses chosen for parliament shall be allowed each of them two shillings a day, and by no means any more.' January 26: 'Also y^{e} same day, by assent of y^{e} congregation, y^{e} charter of y^{e} liberties of y^{e} town was delivered to Richard Frank, in order to get the said charter confirmed.' These entries show a distinct recognition, by the *whole congregation*, of the members chosen by jury.

We now come to a very important epoch in the constitutional history of boroughs—the creation of MUNICIPAL CORPORATIONS. The first instance of a municipal charter of incorporation is supposed to have occurred in the reign of Henry VI. Of the change then commenced, in the form of borough charters, the consequences were more extensive and pernicious than probably were at first foreseen. The system introduced in this reign led, by degrees, to the establishment of the *select or self-elected corporations*, and the manifold abuses of local institutions, which were abolished by Act of Parliament in 1835.

It is not possible to trace, in every case, the successive steps by which the free and simple method of borough government, in the Norman and Plantagenet periods, degenerated into the mercenary and utterly debased system of the last and earlier parts of the present century. The change came by slow and almost imperceptible degrees. The extracts just given respecting Lynn furnish some clue to the mode in which it was accomplished. We find at Lynn a self-elected municipal body—the Twenty-four—constituted not by the charter of the town, but by a voluntary arrangement on the part of the burgesses, who, however, retained the supreme power in their own hands. Again in the case of Ipswich, cited a few pages back, there is even, so early as the reign of King John, a select governing body—the Twelve Portmen; though, indeed, this committee was not self-elected, but chosen by the townsmen. It is further added — and that is a most important piece of information — that the election of the Twelve Portmen was in accordance with the practice of the other free boroughs of England. So that, from very early times, the boroughs allowed to exist in their constitution a superior ruling body, which—we may conjecture– became converted gradually and stealthily into an oligarchy. We shall presently see how an apparently unimportant variation in the language of municipal charters was converted by legal ingenuity into a means of confirming abuses originated by mere usurpation.

Charters and grants of franchise to towns, in the earlier

reigns after the Conquest, were usually made in favour of the townsmen and their *heirs*. Thus a charter of Henry II. is granted to the citizens of London, 'to hold to them and their heirs.' After the time of Henry III., the form was slightly varied; it became: 'To hold to them and their heirs and successors,' or 'to them and their successors.'* These appear, at first sight, trivial matters. But the expressions in question, in later times, assumed great importance, as indications of the classes of persons entitled to the municipal franchise.

The distinction between towns incorporated, and others, is thus expressed by Madox: 'A town not corporate had succession only as an aggregate body or community, or, if you please, as one generation succeedeth another. This might be called a natural succession. On the other hand, a town corporate had succession as an aggregate body or community too; but as a community modified, or putt into a particular form. It had succession under a special denomination, suppose of mayor, bailifs, and community—mayor, jurates, and community, or the like. And this was a complex kind of succession—to wit, both natural and artificial.' †

Thus, in earlier times, the towns were regarded as bodies perpetual by *natural* succession. But when the artificial system of creating corporations within towns arose, the law gave to these offsprings of its ingenuity special and artificial rules of succession. This, however, was not the only difference between corporate and unincorporated towns. The municipal charters of later times are much more minute than their prototypes, and create a great variety of corporate powers. Among the most important was that of purchasing land. This power existed under the old charters, as we have already shown in some instances; but it was abrogated by the Statute of Mortmain (15 Richard II.), and the recovery of it appears to have been the chief object of the earliest petitions for incorporation after that date. Thus, in 13 Henry IV. (A.D. 1444), Plymouth petitions the crown, that the inhabitants, their heirs and successors, may be a *body corporate*, to purchase free tenements for term of life, or in fee, without the king's licence.‡ This application was some time before the actual incorporation of any borough.

It is worthy of consideration whether we have not here a clue to the origin of municipal corporations. The laws commonly called the Statutes of Mortmain restrained, first religious houses,

* Madox, 'Firma Burgi,' chap. ii. sec 12. † *Ibid.* p. 50.

‡ Merewether, 'History of Boroughs,' p. 801.

and afterwards secular bodies, from purchasing land without the licence of the crown. The statute 15 Richard II. c. 5 (A.D. 1391), made about fifty years before the Plymouth petition, extends the prohibition against the purchase of land in perpetuity, to cities and boroughs, 'because mayors, bailiffs, and commons of cities, boroughs, and other towns, which have a perpetual commonalty, and others which have offices perpetual, are as perpetual as men of religion.'

Probably this law, and the consequent difficulty which boroughs experienced in acquiring land for various public purposes, were the principal reasons for that alteration in their charters by which the constitution of bodies corporate was subsequently conferred upon many of them. Of *municipal corporations*, in the modern technical sense, the first known instance is that of Kingston-on-Hull, which was incorporated in 18 Henry VI. (A.D. 1439). This charter does not, however, infringe upon the antient common law respecting the class of persons who were to enjoy municipal rights. It incorporates the *mayor* and *burgesses*, and provides that the mayor, burgesses, and their successors, mayors and burgesses of the town so incorporated, shall be one perpetual corporate commonalty, in deed and name, and have perpetual succession. Power is given to them to bring and defend suits in their corporate name, and also to purchase lands and tenements within the town, notwithstanding the Statutes of Mortmain. Hull is constituted a county by itself, severed from the county of York; and the burgesses are to elect, annually, their own sheriff, who is to hold his county court, monthly, in the town. Powers are also given to the burgesses to elect aldermen, coroners, and other officers.*

This precedent of 18 Henry VI. was speedily followed. Plymouth was incorporated in the same year — Ipswich in 1446; and during this reign, several other municipal corporations were created.

The establishment of the new system ultimately led to still wider departures from the simplicity of the antient government of towns, but it had no great immediate effect in changing the constitution of the governing bodies. It is material to observe that, long after the establishment of the Tudor dynasty, the existence of select or close corporations of boroughs was unknown. In his retrospect of the reign of Henry VII., Serjeant Merewether, who regards the innovation of charters of incorporation with great disfavour, allows—'that the inhabitants

* Merewether, 'History of Boroughs,' p. 860.

were the objects of these grants, and that therefore, properly speaking, such charters made no essential alteration in either the class or the character of the burgesses, who were still the free inhabitant-householders, paying scot and lot.'* And with reference to the reign of Henry VIII., he says: 'Although the foundation was now generally laid for the usurpations which followed in the succeeding reigns, yet, to the close of this dynasty, nothing essential was done to alter the nature of the boroughs or burgesses.'† Even up to the end of the reign of Queen Mary, 'there is no ground whatever for assuming that the burgesses were not, during any part of this reign, as they ever had been, the inhabitant-householders, paying scot and lot, and sworn and enrolled at the court leet.' ‡

These conclusions are probably correct, so far as relates to the burgess-rights defined by municipal charters. But it is clear, from the same authority, that as early as the reign of Henry VIII., gradual encroachments on the liberties of towns had taken place without any legal warrant whatever. For example, the records of a suit respecting the borough of Evesham show that, up to that time, the right of electing the bailiffs of the town was vested in the inhabitants, and then, by mere usurpation, it became transferred to particular persons.§ But the first instance of *a charter, expressly creating a close corporation*, appears to be in the reign of Queen Elizabeth. The charter of 27 Elizabeth (A.D. 1585) to the borough of Helston, introduced a clause which allowed the mayor and commonalty, and their successors, with the aldermen, or the major part of the aldermen, to *elect* and admit *such and so many* of the more discreet, honest, quiet men, and inhabitants of the borough, to be burgesses and freemen of the same borough, as to them should, from time to time, seem fit and convenient.‖

This, of course, was a direct violation of the old common law, which made burgess-ship not a matter of election, but the absolute right of all the free inhabitant-householders. There were other instances of a similar kind in this reign. The Twenty-four burgesses who constituted the common council of Wells began about 23 Elizabeth to assume a power to act without the consent of the general body of the burgesses, and shortly afterwards obtained a new charter, which gave them the power of election, and of making bye-laws. Similarly, in the charter given to Bath in 32 Elizabeth, authority is given to the

* Merewether, 'History of Boroughs,' p. 1090.
† *Ibid.* p. 1144.
‡ *Ibid.* p. 1218.
§ *Ibid.* p. 1420.
‖ *Ibid.* p. 1387.

mayor, aldermen, and common council, to make, from time to time, of the inhabitants of the city, free citizens and burgesses, and bind them, with an oath, to serve and obey the mayor, aldermen, and common council of the city in all their lawful commandments. It is probable that, in many cases, similar assumptions of authority, in derogation of the rights of the general body of burgesses, were allowed, even when there was no pretext of a charter to support the innovations. Thus, at Chester, the charter distinctly gave the power to elect aldermen to the 'mayor and citizens.' Yet, in 1573, the corporation claimed, for the mayor and *common council*, the right of electing aldermen, on the ground of continual usage; and 'that it would be to the utter subversion of the state of this city, if the election should take place contrary to their former order, to the hindrance and defacing of the mayor and city's proceedings.'* In the next reign—that of James I.—the creation of corporations, with authority to select their own members, became still more frequent.

Many of the abuses which by that time had crept into the electoral system were corrected by the celebrated Committees of Elections, appointed by the House of Commons during the latter part of the reign, and the early part of that of Charles I. Sir Robert Cotton, Selden, and Sir Edward Coke were illustrious members of this body, which did much to restore the antient constitutional rights of burgesses.

Among other decisions of the committee, the following may be briefly cited. In the case of Cirencester, which came before the committee in 22 James I. (A.D. 1624), it was determined, 'that there being no certain custom or prescription who should be electors, recourse must be had to the common right, which to this purpose was held to be that more than the freeholders only ought to have voice in the election—viz., *all men, inhabitant-householders, residents within the borough*.'† In the case of Pontefract it was agreed that, 'where no constant and certain custom appears who should be electors in a parliamentary borough, then recourse must be had to the common law, or common right.' Secondly, the important principle was laid down, that *no charter could 'be of force to abridge or alter that common right*.' Another resolution stated that 'of common right all the inhabitants, householders, and residents within the borough ought to have voice in the election.' This decision was confirmed by the House.‡

* Merewether, 'History of Boroughs,' p. 1324.

† Glanville, 'Reports of Cases in Parliament,' p. 107.

‡ *Ibid.* p. 139; 1 'Commons Journals' (May 28, 1624), p. 797.

Several similar conclusions were adopted by the Election Committees in the reign of Charles I. In 4 Charles I., in the case of Bridport, on a question whether the commoners or the two bailiffs and thirteen capital burgesses were electors, the committee resolved, by a majority, that the commoners had voice in election. And like resolutions were made in the cases of Boston and Warwick.

These decisions had the beneficial effect of restoring, in many cases, the antient common-law right of burgess-voters; but the committees, by sanctioning the principle that the suffrage might be varied by custom, opened a door for still greater anomalies and irregularities in later times. The burgess-right, which had originally been characterised by extreme simplicity and uniformity, became, in process of time, superseded by local usages, which varied all over the country.

Among other peculiarities of this kind, may be noticed the remarkable privilege of *potwallers*, in some places in the West of England. It is said that the right was established in three boroughs only—Tregony, Taunton, and Honiton.* I have not been able to ascertain whether the word, variously spelled Potwallers, Pot-wabblers, and Pot-walliners, occurs in antient documents.† Probably the use of the word was merely local.

It seems very doubtful whether the peculiar custom had any great antiquity to recommend it. In 1710, on the trial of an election-petition relating to the borough of Honiton, evidence of old men, who had known the place for fifty years, was given in support of the claim of potwallers. And returns, in 1661 and 1679, signed by potwallers were produced. That testimony traces the right no further back than the Interregnum. The Committee of 1710 reported, that the right of election was 'in the inhabitants of the said borough paying scot and lot, and in the potwallers not receiving alms.' But the House, on a division, reversed this decision by a large majority, and resolved that the right was in scot-and-lot voters only.‡ Fourteen years afterwards, the House was asked to reconsider its former

* Merewether, 'History of Boroughs,' p. 165.

† 'Pot-wabblers: Persons entitled to vote for members of parliament in certain boroughs, from having boiled their pots therein. Tanodunii in agro Somersetensi vocantur pot-walliners.'—Upton's MS. additions to Junius in Bodleian Library; Halliwell's *Dictionary of Archaic and Provincial Words* (London, 1850). 'Wallop—Ebullire, infervescere.'—Junii Etymologicum Anglicanum (Oxon, 1743, fol. 8). 'Walling, *i.e.* boiling; it is now in frequent use among the salt-boilers at Northwych, Namptwych, &c. Perhaps the same as Wallopping.—Grose's *Provincial Glossary* (London, 1811).

‡ 'Commons Journals,' February 3, 1710 (Queen Anne), p. 480.

decision. A petition of several inhabitants of Honiton *not* paying scot and lot states that, 'the petitioners constantly enjoyed the right of voting ever since the restoring of the said borough, which is eighty years since, until 1711, when the House of Commons determined the right of election to be in the inhabitants paying scot and lot only.' A committee of privileges, to which this petition was referred, reported that the right of election was in the potwallers, and their privilege was restored.*

With respect to Tregony, in Cornwall, a committee reported, in 1695, 'That it was agreed that all such inhabitants of the said borough as did provide for themselves, whether they lived under the same roof or not, had a right to vote.'†

A petition ‡ of several of the inhabitants, being *potwalloners*, within the borough of Taunton, in 13 William III. (A.D. 1701), alleges that the right of election belongs 'to such inhabitants and resiants as are potwalloners, or potboilers, there.' The right of this class of voters was allowed by the House of Commons on several subsequent occasions.§

The legality of this peculiar custom has been recognised by statute. The Act 26 George III. c. 100 recites that, in some boroughs, the right of election is 'in the inhabitants paying scot and lot; or in the inhabitants, householders, housekeepers, and potwallers, legally settled,' &c.; and provides that such persons shall not be admitted to vote, unless resident six months before the election.

A committee of the House of Commons, in 1838, resolved, with respect to Taunton, that a potwaller was one, 'whether he be a householder or lodger, who has sole dominion over a room with a fireplace in it, and who furnishes and cooks his own diet at his own fireplace, or some other place within the same house, at which fireplace he had a legal right so to do, and who has actually cooked his diet at such fireplace.' A witness gave evidence before this committee, that it was the custom of the borough of Taunton for a person to boil his own pot at his own fire, in order to make him a potwaller.‖

It would be an almost interminable task to describe all the varieties of burgess-right which became established in different towns after the practice of creating select corporations became general.

* 20 'Commons' Journals' (December 18, 1724), p. 36.

† 11 'Commons' Journals' (March 5, 1695), p. 492.

‡ 13 'Commons' Journals' p. 484.

§ 18 'Commons' Journals' (July 20, 1715), p. 241; 1 Douglas, 'Cases of Controverted Elections, 15 and 16 Geo. III.' p. 367.

‖ Falconer and Fitzherbert's 'Reports' (8vo. London, 1839), pp. 301 and 311.

The Committees of Privileges, in the time of James I., allowed that the general common-law right of scot-and-lot voters might be overridden by established local usage. This decision tended to confirm and increase local diversities from the general law. At the time when the Royal Commissioners, appointed in 1833, to inquire into the state of municipal corporations, made their report, the borough franchises and government had fallen into the utmost confusion, and the grossest abuses prevailed. The Commissioners state that, 'even when those institutions exist in their least perfect form, they are inadequate to the wants of the present state of society. In their actual condition, where not productive of positive evil, they exist, in the great majority of instances, for no purpose of general utility. The perversion of the municipal institutions to political ends has occasioned the sacrifice of local interests to party purposes, which have been frequently pursued, through the corruption and demoralisation of the electoral bodies.' Upon the Report of the Commission was founded the Act of 1835 for the Regulation of Municipal Corporations in England and Wales (5 and 6 Will. IV. s. 76). This celebrated statute abrogated a vast multitude of local laws, statutes, usages, charters, and letters-patent, under which peculiar systems of government prevailed in different boroughs, and gave to them a uniform constitution, consisting of a mayor, aldermen, and town-councillors, elected by the general body of resident ratepayers.

The modern history of boroughs is not, however, within the scope of the present inquiry. The main object of this work has been to examine the parliamentary institutions of the Plantagenet period. If the investigation has been successful, it establishes this general conclusion — that, according to the primitive law of parliament, all the free inhabitants of each county were entitled to vote for knights of the shire, and that, in every city and borough, all the free resident householders had a right to participate in the choice of representatives. In other words, the result of these researches is, that the House of Commons was originally what its name implies — a council elected by and for the Commons of England.

APPENDIX.

Particulars taken from Manuscript Cartularies in the Record Office, showing the Tenures and Services of Tenants of various Manors in the Fourteenth and Fifteenth Centuries.

I. Battle-Abbey (Sussex).

Cartulary No. 57.—The dates assigned to the extents in this volume are those given by the late Sir F. Palgrave in App. II. to the 'Eighth Report of the Deputy-Keeper of the Public Records' (pp. 139-141).

1. *Manor of Bernehorne* (Sussex).—An extent taken 35 Edward [I.] gives 8 freeholders ('liberi tenentes'), 7 nativi, 18 coterelli, and one tenant for life, 'Silvester sacerdos,' who holds an acre adjacent to his mesuage. (1)

2. *Manor of Bright-Walton* ('Britwolton') (Berks).—A rental of 12 Edward [II.] gives 6 freeholders ('qui tenent libere'), 10 virgarii, 17 cotarii, 28 villani, and 4 coterie. (2) Of the freeholders, 2 are said to be villani of the lord; another is the parson of Bright-Walton.

3. *Manor of Bromham* (Wilts).—A rental of about the same date as the last gives 12 freeholders ('liberi tenentes') 5 'majores Erdlings' (*i.e.*, yerdlings or yardlings = virgarii), 8 'minores Erdlinges,' 11 'Halferdlinges et majores cotarii,' 13 'minores cotarii,' 3 coterie, and 2 who do not perform works. (3) There are also two tenants at will, one a nativus of the lord.

4. *Manor of Limenesfeld* (Wilts).—An extent taken in 5 Edward [II.] gives 55 freeholders ('liberi tenentes'); no other tenants are mentioned. Some of them are said to be 'adeo parvæ tenuræ et inpotentes quod neque carucas integras nec earum aliquam partem habere estimatur.' (4)

5. *Manor of Prynkehamme.*—A list of tenants in the same handwriting as the last extent gives 10 freeholders ('liberi tenentes'), 23 nativi, and 29 tenants at will. (5)

6. *Manor of Brodehamme* (Wilts).—An extent taken in 5 Edward II. gives 7 freeholders ('liberi tenentes'), 9 nativi, and 4 tenants at will. One of the nativi is the Prior of Tanridge (6) ('Tanregge'), unless the seven names at the top of fol. 73, which follow the two coming at the bottom of fol. 72 *b*, are names of tenants whose class has not been defined.

Cartulary No. 56.

1. *Hundred of Battle.*—A rental and custumal made 8 Henry VI.

a. Tenures in the parishes and precincts of the borough of Sanglake, otherwise Battle. In Tiltonsbathe are 8 freeholders, and 13 who hold 'per irrotulamentum.' (7) In Breggesell are 6 freeholders, and 1 who holds 'per irrotulamentum.' (8)

b. Outside the vill of Battle, near Longreche, are 2 freeholders, and 2 who hold 'per irrotulamentum.' (9)

2. *Manor of Bright-Walton.*—Rental renewed 3 Henry VI. It appears that there were 1 freeholder (10), 8 virgarii, 5 dimidii virgarii, 16 holding cotsetella (one being the Rector of Bright-Walton), 5 holding cotagia, and 6 called cotarii. (11)

3. *Manor of Bromham.*—Rental renewed 8 Henry VI. There are 14 freeholders, 5 'more yerdlynges,' 7 'lasseyerdlynges,' 11 'halfyerdelynges et majores cotarii,' and 33 not defined. (12)

II. A Religious House in Coventry, most probably the Priory.

Cartulary No. 21.

1. *Manor of Sowe* ('Sawe') (Warwick).—An extent taken in 12 Henry IV. In the same hand as this is a list of the tenants of:

2. Wylnehale.—There are 1 freeholder, 13 tenants at will, and 9 cotarii. (13)

3. Pakwode (? Packwood) (Kington hundred).—There are 8 freeholders, and 36 tenants for life (some of the names being, as in almost all similar lists, repeated). (14)

4. *Manor of Offchurch* (hundred of Lylyngton).—An extent taken in 12 Henry IV. gives 2 freeholders, 8 tenants for life, 36 'native tenentes' (one of whom is a cleric, and two are said to be nativi of the lord), and 10 cotarii. (15)

5. *Manor of Ulnton* (hundred of Stonelegh).—An extent taken in 12 Henry IV. gives 2 freeholders, 8 tenants 'de liberâ tenurâ de novo perquisitâ citra facturam veteris extentæ' (which was made, it appears, in 31 Edward I.), 16 'native tenentes,' and 7 cotarii. (16)

6. *Manor of Franketon* (hundred of Knytlowe).—An extent taken in 12 Henry IV. shows that there were 3 freeholders, 6 tenants 'de lib. ten. de novo perquis.' since old extent, 16 'native tenentes,' 8 cotmanni, and 4 tenants at will. (17)

7. *Manor of Merston-Priors* (hundred of Kyngton).—By an extent taken 12 Henry IV., there are 20 freeholders, 8 tenants at will 'de lib. ten. perquis.' since old extent, and 27 'native tenentes;' 1 tenant 'ad firmam,' and 2 who pay rent to the Pitanciarius. (18)

8. *Manor of Hardwick-Priors* (same hundred).—An extent

of the same date gives 8 freeholders, 13 'native tenentes,' and 5 cotarii.

9. *Manor of Honyngton* (same hundred).—An extent of the same date gives 6 freeholders, 5 tenants at will, 'per liberam firmam,' 23 'native tenentes,' 4 'native tenentes de aliâ tenurâ quæ vocatur cotemanni,' and 7 cotarii.

10. *Manor of Wasperton* (same hundred).—An extent of the same date gives 2 freeholders, 6 tenants for life and at will, 'de lib. ten. perquis.' since old extent, 2 freeholders 'de Hethecot,' 16 'native tenentes,' and 6 cotarii.'

NOTES.

(1) The free tenants hold from 40 acres of land to a small piece, at annual rents from 7*s.* to a goose worth 2*d.* One holds an acre of meadow, and pays one penny at Michaelmas. Two are said to pay relief and heriot. One has to perform suit of court. Two hold a cottage each, and one a mesuage with land. The nativi hold from a mesuage and 30 acres of land to one acre, at rents varying from 8*s.* a year to 2*s.* Three of them have to perform various customary works (called both 'opera' and 'consuetudines'), which are defined, their money-value being also given. Allowances being made for meals, the balance is stated to be sometimes against the lord, sometimes zero 'si dominus receperit opus.' The remaining four are stated to perform suit, and to pay relief and heriot. In a note, however, *all* the nativi are said to do so. The heriot is to be the best beast, if there be a live one; if not, the lord has no heriot, 'ut dicunt.' The coterelli hold from a cottage, with an acre and a half of land, to a cottage only, at rents from 4*s.* to 6*d.* a year. Fourteen perform suit, and pay relief and heriot. One pays relief only. One pays 3*s.* 'pro omnibus.' A few hold land only, without a cottage. Three are 'de feod' Episcopi,' and pay rent only. They are distinguished from the rest of their class in a note. Neither the nativi nor the coterelli can marry their daughters without licence.

(2) I am of opinion, from a careful examination of the handwriting of the MS., that this extent, and the following one, were taken in 12 Edward I. The virgarii hold each a virgate, at 5*s.* 4*d.* per annum, of which 4*d.* is paid for an acre, which is held by each 'in communi de Greneholte.' They are to perform certain 'consuetudines,' which are defined—the alternative of a payment (of three hens and a cock) being permitted for one of the services, at the pleasure of the lord. They pay one penny, called 'Lesselver,' to the lord, for every animal of two years old or more, at the feast of S. John Baptist. They are 'portare faldam domini ad sommonitionem servientis ter in anno,' whithersoever they are ordered. No reduction of their rent is to be allowed for these services. If, however, 'debent operari,' they must do whatever is ordered every other day from S. John

Baptist to the Gule of August [Aug. 1], and every day from the Gule to Michaelmas, from morning to midday; and for full work a reduction of 1*s.* on the rent of each will be made. The cotarii hold half a virgate each, at 2*s.* 4*d.* per annum. Two pay an additional sum of 2*s.* a year, to be exempted from performing works. Each pays 4*d.* a year for an acre, which is held by each 'in Greneholte . . . in communi inter alios;' but this rent is not to be forgiven to any of them for their works. If they work, they are to do whatever is ordered during certain periods, with an allowance of 2*s.* off their rent for full work. An allowance of 2*s.* is made off the rent of the man who is chosen by the lord to be his ploughman or 'ad aliud officium.' For certain works, such as sheep-washing and shearing, with the other tenants ('cum aliis'), no reduction is made. The free tenants, excluding the two villani (who are not mentioned), are to perform fixed services. All the tenants, 'tam liberi quam servi,' are to attend the three 'precariæ' at harvest-time, 'ad metendum.' The lord can at pleasure choose the præpositus and other ministers, with two exceptions, from the custumarii. He can select them all from the virgarii, cotarii, or those who hold 'de assarto quia omnes sunt villani sui et *servilis conditionis*, nec possunt maritare filium vel filiam sine licentiâ domini extra libertatem, vel vendere bovem suum vel juvencum.'

(3) The free tenants may, perhaps, number only eleven. Their services are defined. They appear all to pay relief and heriot. The virgarii owe certain defined works, for which no reduction of their rent is made; the works for which abatement is allowed are 'quicquid eis injungitur,' for certain periods, with other works specified. The same is also the case with the other inferior tenants, except the 'minores cotarii,' who are allowed no reduction.

(4) Most of them perform suit of court, and pay heriot and relief.

(5) Six of the free tenants perform suit of court, and pay heriot and relief; two pay heriot and relief—two relief only. The customs and works of the nativi are definite, and the money-value is given. They are excused in two cases. Four of these tenants are said to be of Prynkehamme; the remainder belong probably to Limenesfeld, as the whole 23 are referred to as 'tam illi de Lymenesf' quam illi de Prynkehamme.'

(6) He holds four acres of land, at one shilling a year, 'pro omnibus.'

(7) The former pay heriot and relief; the latter heriot and relief 'post mortem,' and 'per alienationem' heriot, and a fine at the lord's will. Their number is approximate, the 'heirs' holding one tenement not being named.

(8) Three of the free tenants owe suit of court, relief and heriot, one suit only, and two do not owe heriot or relief. The tenant by enrolment owes heriot, and a fine at the lord's will.

(9) The free tenants owe suit, heriot, and relief; the others heriot and a fine at will.

(10) He owes suit, heriot, and relief for one holding 'per cartam,' and for the other a service and suit; whether heriot or no is to be enquired.

(11) The virgarii perform defined services; two are said to owe heriot and suit. The dimidii virgarii render certain services. Of the holders of cotsetella, four pay heriot in money, and all but one perform services and works. The holders of cotagia, all but one, owe heriot and suit; three perform works. Of the cotarii, only one performs work. A memorandum is added: 'Et omnes custumarii qui debent sarclare bladum domini . . . Non licebit eis maritare filium vel filiam suam vel bovem suum vel jumentum vendere extra libertatem prout patet per vetus custumale.' See note (2).

(12) The free tenants owe certain specified services. The number in the text is only approximate, the colleagues of one Chapman not being enumerated. Some of the halfyerdelinges pay heriot in money.

(13) The tenants at will owe, some of them, suit of court and heriot, others certain defined works besides. Others pay rent only. The same is true of the cotarii.

(14) The free tenants, all but one, who does only suit of court, render suit twice a year, with wardship, marriage, relief, and for heriot their best beast. The tenants for life render, most of them, suit and heriot, their rent ranging from 40*s.* to 6*d.*

(15) Of the free tenants, one pays, with rent, the price of the third part of a pair of gloves, and does an 'opus' worth a halfpenny, the lord having heriot, ward, and relief. The other pays rent, does works, and renders suit of court. Each holds a mesuage and half a virgate of land. The tenants for life hold, with (all but one) mesuages, from a virgate and three acres to half a virgate.

(16) The lord has from the free tenants as heriot 'unum equum, cellam, et gladium;' with ward, marriage, and relief. Both do works, and attend courts-leet. The eight tenants 'de lib. ten. perquis.' since old extent pay rent, and all, but one, come to the bid-day, and owe heriot. The 'native tenentes' pay rent, partly in condonation, during the lord's pleasure, of the works in the old extent, except one work with the custumarii at the 'metebien'' at harvest. They render suit of court and leets, and pay heriot. The cotarii render the same services.

(17) One of the free tenants has to attend the 'metebien'' with all his household, except his wife, the lord providing meals. The lord has his best beast after his death, ward, marriage, and relief of his heir. He also does suit at the Great Courts twice a year, and afforcement of court. Of the others, one renders suit and afforcement, ward, marriage, relief, and heriot; the other, suit and heriot. Of the tenants 'de lib. ten. perquis.,' since old extent, all, but one, render suit, a bid-day

('precaria') at harvest, and heriot. Of the 'native tenentes,' one is said to do suit at all the courts and leets, a precaria at harvest, and heriot, 'tam pro reddit',' as for the works particularised in the old extent, 'sibi relaxatis,' during the lord's pleasure. The others are said to do, some of them, 'servicia prædicta,' one 'opera,' and others 'opera prædicta.' It is not easy to see what is intended. The same is the case with the cotmanni.

([18]) Of the free tenants, the first holds in fee four virgates and a mesuage for the tenth of a knight's fee, and by service of four shillings a year and scutage, 'cum acciderit.' He does suit of court, 'de tribus in tres.' He has to come with at least eight men to the 'metebien'' for one day, 'ad cibum domini.' The lord has for heriot a horse, harness, a sword, a shield, and a lance, 'si habuerit;' and for 'principale' his best beast, ward, marriage, and relief. Another has to do three ploughings a year, and to find two men for one day for the precaria without food, and two for the 'metebien',' the lord providing meals. He does suit at all the courts, and the lord has heriot and principale. Another does a moiety of these services, suit at all the courts and leets, and gives heriot and principale. Another, who holds only a mesuage and five acres, has to plough, 'sicut minutus est,' thrice a year, to find one man for two days—viz., for the 'bedripe' and the 'metebien'' —and to do suit twice a year at courts and leets. One pays a penny for all services. Of the tenants at will, each renders suit and heriot, and some do two works at harvest. One, who formerly did the iron-work of eight ploughs for his holding with the lord's iron, now pays sixteen shillings a year. Of the 'native tenentes,' one is said to pay two shillings of his yearly rent to the seneschal, partly for works set forth in the old extent, but now released at the pleasure of the lord. He does, however, one work at the precaria in harvest, suit at all courts and leets, and pays for heriot his best beast: he gives 'auxilium' also with the other custumarii. The others do, some the 'servicia,' some the 'opera,' and some the 'opera et servicia' aforesaid.

In the foregoing notes, and the extracts to which they refer, no attempt has been made to present anything like an exhaustive summary of the rentals and extents which have been dealt with. Anything short of a transcript must necessarily give a most imperfect idea of the amount of materials which lie hidden in unprinted monastic cartularies.

For an explanation of most of the terms which occur in this Appendix, the reader may consult the 'Interpreter' of Dr. Cowel.

F. S. H.

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